L 52/2

First and Second Annual

US-USSR JOINT LEGAL SEMINAR

Moscow
September 1988
and
Washington, DC and New York City
January 1989

UNITED STATES DEPARTMENT OF COMMERCE
Office of General Counsel
Washington, D.C. 20230

C1.2:

READEX best copy available

GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington D.C. 20230

FOREWORD

In April 1988, the Joint US-USSR Commercial Commission signed a protocol instituting a series of Joint Legal Seminars between the United States and the Soviet Union. These Seminars were to be co-sponsored by the U.S. Department of Commerce and the Soviet Ministry of Foreign Economic Relations. The Seminars were intended to provide a forum for lawyer-to-lawyer dialogue between Soviet and American attorneys and to broaden our understanding of each other's commercial legal systems.

Two Joint Legal Seminars have been held. The First Seminar took place in Moscow in September 1988. The Second Seminar was held in Washington, D.C. and New York City in January 1989. The intentions of U.S. Secretary of Commerce Verity and Soviet Deputy Minister of Foreign Economic Relations Kachanov were more than fulfilled by the lively and substantive discussions that took place at both Seminars. The U.S. and Soviet sides were so pleased by the results of the first two exchanges that at the conclusion of the Second Seminar in Washington, Chief of Law and Treaty Department Mikhail M. Nesterov and I signed a protocol affirming the continuation of the Seminars and agreeing to establish working groups of lawyers on commercial legal topics of interest to both sides.

I consider it a great privilege to have led an outstanding U.S. delegation of senior level government and private sector attorneys to Moscow for the First Joint Legal Seminar. It was equally an honor to host such a distinguished delegation of Soviet attorneys during their visit to the United States for the Second Seminar. The learning that took place on both sides will be invaluable in our future economic relations.

The papers the Soviet side gave at both the First and Second Seminars are presented here. I would like to thank Catherine Novelli an attorney with the Office of Chief Counsel for International Commerce, for editing these papers. Ms. Novelli and Brenda Lodge of my staff also deserve thanks for ensuring that these Seminars took place. I would also like to thank Eleanor Roberts Lewis, Acting Chief Counsel for International Commerce, and Jack Brougher, Director, Office of Soviet Affairs, for all of their contributions to these Seminars.

It is my hope that the first two Joint Legal Seminars are only the beginning of a long and fruitful commercial legal dialogue between Soviet and American lawyers.

January 1989

Robert H. Brumley

CONTENTS

First US-USSR Joint Legal Seminar, September 1988 Moscow v

U.S. - U.S.S.R. Legal Exchange—An Historic Opportunity 1
By Robert H. Brumley, II

General Summary of the Legal Basis of Soviet-American Trade and Economic Cooperation 4
By M. M. Nesterov

Legal Regime of the Establishment and Operation of Joint Ventures with Firms From Capitalist Countries 7
By V. Kuvshinov

Legal Protection of Intellectual Property and its Role in Soviet-American Relations 16
By Professor M. M. Boguslavsky

Arbitration Court at the USSR Chamber of Commerce and Industry: The New Legal Regulation 23
By Professor V.S. Pozdnyakov

Second US-USSR Joint Legal Seminar, January 1989 Washington, DC and New York City 25

At the Opening of the Second US-USSR Joint Legal Seminar 26
By Honorable C. William Verity

Certain Issues of Legal Improvement of Foreign Economic Relations of the USSR 28
By M. M. Nesterov

Cooperatives in the USSR 33
By I. A. Prikhodko

Legal Status of Foreigners in the USSR in the Sphere of Foreign Activities 37
By Yu. P. Tsvetkov

New Economic Mechanisms in the USSR 40
By V. A. Kozlov

Sources and Procedure for Financing Enterprises in the USSR 43
By A. S. Antonov

Regulation of Civil and Legal Relations Between Soviet and Foreign-Economic Organizations in Carrying Out Export-Import Operations 46
By M. G. Rozenberg

Some Questions on the Resolution of Disputes in Commercial Arbitration in Light of the New Soviet Legislation 49
By S. N. Lebedev

Accounting Methods and Systems Employed By Inaudit with Respect to Joint Enterprises 55
By A. S. Antonov

Legal Matters of Technology Transfer, the Use of New Forms of Cooperation and Protection of Intellectual Ownership 58
By Professor M. M. Boguslavsky

Joint Ventures in the USSR with Participation of Firms in Capitalist Countries: Legal Questions of Establishment and Operation 64
By S. Yu, Ryabikov

Joint Ventures: Some Practical Questions Surrounding Their Founding and Functioning 70
By B. O. Kozhevnikov

The Law on the State Enterprise (Association) 76
By V. A. Kuvshinov

The Consequences of Declaring a Foreign Trade Deal Invalid Under Soviet Law 82
By V. A. Ostrovskiy

Legal Status of Soviet Organizations—Subjects of Export and Import Operations 85
By Professor V. S. Pozdnyakov

Drawing Up Contracts with U.S. Firms 93
By V.V. Dragunov

Legal Regulation of the Foreign-Economic Contracts 96
By A. S. Komarov

Supporting Documents 101

Concerning the Further Development of Foreign Economic Activities of State Cooperative and Other Public Enterprises, Entities and Organisations 102

Draft of Law on Patents, Inventions 115

Rules of the Arbitration Court at the USSR Chamber of Commerce and Industry 132

FIRST US-USSR JOINT LEGAL SEMINAR

SEPTEMBER 1988
MOSCOW

LIST OF MEMBERS OF THE SOVIET DELEGATION PARTICIPATING IN THE SEMINAR ON LEGAL ASPECTS OF TRADE AND ECONOMIC COOPERATION BETWEEN THE USSR AND THE USA

MOSCOW, SEPTEMBER 11-18, 1988

1.	**Nesterov M.M.**	Chief of General Legal and Treaty Department of the Ministry of Foreign Economic Relations of the USSR, Head of the delegation
2.	**Kuvshinov V.A.**	Deputy Chief of General Legal and Treaty Department of the Ministry of Foreign Economic Relations of the USSR, Deputy Head of the delegation
3.	**Kozhevnikov O.V.**	Trade Representative of the USSR in the USA
4.	**Pozdnyakov V.S.**	Professor, Doctor of Law, Head of the Law Chair of All-Union Academy of Foreign Trade
5.	**Boguslavsky M.M.**	Professor, Doctor of Law, Head of Sector of International Private Law, Institute of State and Law of the USSR Academy of Sciences
6.	**Lebedev S.N.**	Professor, Candidate of Law, Head of the Chair of Private International and Civil Law, Moscow State Institute of International Relations
7.	**Gorodissky M.L.**	Candidate of Law, General Director V/O "Soyuzpatent"
8.	**Kozhevnikov B.O.**	Candidate of Law, Director of Consulting Centre of the USSR, Chamber of Commerce and Industry
9.	**Komarov A.S.**	Associated Professor, Candidate of Law, Law Chair of the All-Union Academy of Foreign Trade
10.	**Balykin A.N.**	Deputy Chief, Economic Department, MFER
11.	**Tomberg R.G.**	Deputy Chief, Department of Economic Relations with Developed Capitalist Countries, MFER
12.	**Zapolsky S.V.**	Deputy Chief of Department, Ministry of Justice of the USSR
13.	**Gnutov V.A.**	Head of subdivision, Ministry of Finance of the USSR
14.	**Tsvetkov Yu.P.**	Chief of Division, General Legal and Treaty Department, MFER
15.	**Ryabikov S.Yu.**	Chief of Division, General Legal and Treaty Department, MFER
16.	**Davydov V.P.**	Chief expert, General Legal and Treaty Department, MFER

US - USSR LEGAL EXCHANGE— AN HISTORIC OPPORTUNITY
Introductory Remarks

By
Robert H. Brumley, II
General Counsel
U.S. Department of Commerce

Thank you, Mr. Nesterov, as well as the Ministry of Foreign Economic Relations, for your gracious welcome and hospitality. We of the U.S. delegation are pleased and honored to be your guests at this first session of the US - USSR Legal Exchange. I would also like to express my sincere appreciation to Mr. Oleg Kozhevnikov, Trade Representative to the United States, for working very diligently on the enormous logistical challenges of arranging this first seminar.

I. Introduction

Both the U.S. Government and our private sector see this series of seminars as an historic opportunity. By exchanging information and ideas about our respective legal systems, we can pave the way to better trade and economic relations between our nations.

One of the most difficult problems we will be discussing in these seminars is how business people from our two nations, with very different legal systems and ways of controlling our economies, can determine and enter into mutually beneficial commercial relationships. For example, we will explore how differing levels of protection for intellectual property can be accommodated. Also, delegates from the U.S. Department of Commerce will be discussing the difficulties that arise in applying U.S. trade remedy laws to countries with "non-market" economies.

These seminars arose from a series of U.S. - Soviet discussions at the highest political levels. At the Washington Summit, and again in Moscow, General Secretary Gorbachev and President Reagan mentioned exciting new developments in the Soviet Union and the readiness of both our nations to improve our trading relationship. As one important possibility, the two leaders mentioned the development of commercially viable joint ventures that comply with the laws and regulations of both countries.

The specific plan for these seminars was developed at the Tenth Session of the Joint U.S. - U.S.S.R. Commercial Commission, held here in Moscow in April of this year. Secretary of Commerce William Verity and Deputy Minister of Foreign Economic Relations Alexander Kachanov approved these sessions as the best way to explore the legal conditions affecting our bilateral commercial cooperation.

These seminars begin at a time when the overall relationship between our two nations has been improving. For many reasons, we hope this improvement will continue. Progress in our economic relations, of concern to all of us here, is necessarily affected by other aspects of the overall relationship between our nations. For example, U.S. views on trade are affected by human rights, including emigration. As a nation formed mainly by immigrants, the United States honors freedom of movement as a basic human right. Concerns about this freedom have a powerful impact on the attitude of the American people—and their government representatives—towards the expansion of trade.

II. The U.S. Delegation

I am privileged to be accompanied by an especially distinguished delegation of U.S. attorneys. They include the top legal officers of U.S. government agencies and major U.S. corporations. From the U.S. Government:

Phillip Brady
Deputy Counsel to the President

Christopher Hicks
General Counsel
U.S. Department of Agriculture

Alan Raul
General Counsel
Office of Management and Budget

George Salem
Solicitor
U.S. Department of Labor

Lawrence Jensen
General Counsel
U.S. Environmental Protection Agency

Michael Levitt
Assistant General Counsel
for Legislation and Regulation
U.S. Department of Commerce

Eleanor Roberts Lewis
Acting Chief Counsel for International Trade
U.S. Department of Commerce

Cecil Hunt
Acting Chief Counsel
for Export Administration
U.S. Department of Commerce

Stephen J. Powell
Acting Chief Counsel
for Import Administration
U.S. Department of Commerce

Michael Keplinger
Patent and Trademark Office
U.S. Department of Commerce

Catherine Novelli
Office of Chief Counsel
for International Trade
U.S. Department of Commerce

Jack Brougher
Director, Office of Soviet Affairs
International Trade Administration
U.S. Department of Commerce

Richard Johnson
Office of Soviet Affairs
U.S. Department of State

Michael Mears
Commercial Counselor
U.S. Embassy, Moscow

Our private sector delegates are mostly General Counsels of U.S. corporations, as opposed to legal experts from firms whose primary business is the practice of law. By selecting such people, we intended that our delegates each be an expert not only in commercial law, but in the practicalities and risks of day-to-day commerce. These distinguished representatives of U.S. business are:

Howard Roy Berkenstock
Vice President, Secretary and
General Counsel
Richards Medical Company

Scott Campbell
Senior Vice President,
General Counsel, and Secretary
Kellogg Company

Whitehead Elmore
Vice President, General Counsel and
Secretary
Ethyl Corporation

Thomas Forman
Senior Vice President and General Counsel
Firestone Tire and Rubber Company

Paul Konney
Vice President, General Counsel and
Secretary
Tambrands, Inc.

Homer E. Moyer
Vice Chairman, Section of International
Law and Practice
American Bar Association

Joe Shapiro
Senior Vice President and General Counsel
The Walt Disney Company

III. U.S. Views on the Role of Commercial Law

The U.S. has learned some harsh lessons in recent years about the effect of inefficient laws and regulations on trade. I would like to discuss those lessons and outline what we have come to believe is the proper role of government in supporting economic efficiency with sound regulatory and commercial laws.

Early in our experience as an industrialized nation, we barely noticed, or perhaps did not notice, when we passed a protectionist law or wasteful regulation that raised our production costs. We enjoyed abundant natural resources and our firms were unchallenged in our own markets. By the end of World War II, our already resource-rich economy had been mobilized to a high-production footing that extended the dominant trading position of the U.S. into international markets.

The situation has drastically changed. Many nations now compete vigorously to supply goods and services to themselves and to consumers in other countries. We in the U.S. have launched a kind of perestroika of our own to meet this competition. We have learned that we can no longer afford laws that misallocate resources, cause uncertainty in commercial relationships, promote inefficiency, or simply cost too much to comply with or administer. In fact, we think that in today's increasingly worldwide economy, no nation can afford such laws and regulations.

We have discovered that in order to allow efficient production and trade, government must weed out needless legal and regulatory restrictions on commercial activity. The Reagan Administration has moved aggressively to achieve this goal. For example, we have moved to reduce needless regulation of such industries as trucking, airlines and telecommunications. In fact, we have called for deregulation wherever competition among companies exists. We have seen that competition provides all the discipline that is needed in order to ensure the production of goods and services to meet consumers' needs at the lowest possible cost.

In our view, a good commercial legal system allows business and trading entities to seek the most efficient solutions to the universal problem of meeting consumers' needs and demands. To do this, we believe, governments should take a relatively "light hand" in actions that affect commercial decisions. To avoid costly uncertainty in business dealings and in decisions about where capital is best invested, it is also very important that a commercial legal system be predictable and transparent. In international trade, we especially need to know what we as trading nations can expect from each other — which is what this seminar is all about.

Obviously, a nation's legal system must be clearly understood by its own commercial and trading entities. To promote efficient trade, our systems must also be as clear as possible to the trading entities of the other nation. The fewer "secret rules" we have, the better. What we need, if you will allow me to say so, is transparency of commercial law — "legal glasnost."

IV. Structure and Format of the Legal Seminar Exchange

We envision the U.S. - U.S.S.R. Legal Seminar Exchange as the forum for a continuing dialogue. As participants broaden their knowledge of each others' systems, and develop more practical experience, this dialogue should deepen. At later seminars, we will probably want to meet in smaller groups to discuss specialized topics in increasing detail. In the long run, our goal should be to learn to work within and between our legal systems to tailor the most efficient and mutually beneficial commercial relationships possible.

At this first seminar, we intend to present for the Soviet delegation and audience a discussion of all the major elements of the U.S. commercial legal system. Thus, six of the nine panels at this session are devoted to presentations of the U.S. system. At the second session, when the Soviet delegation comes to the United States—perhaps in December, or early next year—a broad audience of U.S. Government and private attorneys and jurists will have an opportunity to learn more about the U.S.S.R. commercial legal system from Soviet experts.

Let me stress that the U.S. delegation invites your questions and criticisms during the seminar panel sessions, as well as at our luncheons and other events. We consider this kind of lawyer-to-lawyer dialogue essential to a real understanding of our respective legal systems.

Thank you again for inviting us here as your guests.

GENERAL SUMMARY OF THE LEGAL BASIS OF SOVIET-AMERICAN TRADE AND ECONOMIC COOPERATION

By
M. M. Nesterov
Chief of General Treaty and Legal Department
Ministry of Foreign Economic Relations of the USSR

As is known, the first trade agreement between the USSR and the USA was signed more than 50 years ago, in 1935, and it was in force up to July 1937. Based on that agreement, the USA undertook the commitment to apply most-favored-nation tariff treatment to imports from the USSR. The Soviet Government, in its turn, assumed the obligation to take steps towards an essential increase of purchase of American commodities. In August of the same year, a new Trade Agreement was signed in accordance with which both sides enjoyed most favored-nation conditions. That Agreement was annually prolonged up to the year 1942, when the two countries agreed that it would be in force until either of the sides declared at least six months in advance its desire to terminate it. During the Great Patriotic war, a number of agreements were entered into with the USA on military and economic cooperation, including on lend-lease, based on which military equipment, raw commodities and services were delivered to the USSR. In 1951, that Agreement was unilaterally terminated by the American side through a note from the State Department to the Embassy of the USSR in the USA. As a result, the volume of Soviet-American trade by 1955 was worth 22 million rubles total, with deliveries of commodities from the USA practically coming to an end.

The currently effective treaty and legal basis and the organizational mechanism of trade and economic relations between the USSR and the USA were basically created at the beginning of the seventies when a number of intergovernmental agreements and documents were signed which provided for the development of trade-economic and financial relations between the two countries.

"The Principles of Mutual Relations Between the USSR and the USA" signed on May 6, 1972, provide in Article 7 that, "the USSR and the USA regard trade and economic connections as an important and essential element of strengthening bilateral relations and shall actively contribute to the promotion of such connections. They shall promote cooperation between respective organizations and enterprises of both countries and contribute to the signing of respective agreements and contracts, including on a long-term basis."

The signing, in 1972, of a new Agreement on Trade between the USSR and the USA belongs to the same period as well. That Agreement provided for mutual most-favored-nation treatment, the obligations by both Governments to promote commodity and services exchange between both countries, and conducting trade operations between the USSR and the USA in accordance with the laws and rules in force in each of the two countries, as well as on the basis of the contracts signed between Soviet foreign-trade organizations and physical and juridical entities of the USA.

The Agreement contains a provision (Article 3) on the possibility of taking such measures by either of the two Governments as it deems necessary to prevent the import of commodities from the other country in such quantities and under such terms and conditions which will cause or increase the disruption of the internal market or create the threat of such disruption.

Payments in accordance with the Agreement were proposed to be effected in US dollars or in any other freely convertible currency.

In compliance with the Agreement (Article 7), both Governments encourage reference to arbitration for settlement of disputes resulting from foreign-trade transactions, it being understood that such arbitration shall be stipulated either in the contracts or in separate agreements in writing between the parties to the contract.

Such agreements shall provide for holding the arbitration proceedings in compliance with the Arbitration Rules of the European Economic Commission of January 10, 1966, as well as shall determine, as a place of arbitration, the place in a country other than the USSR or the USA, but which is a participant of the 1958 Convention "On Recognizing and Enforcing Foreign Arbitration Awards." Simultaneously, Article 7 provides for the right of the parties to the contract to take a decision on any other form of arbitration which they would jointly prefer and agree that it meets in the best possible way their specific purposes. Apart from the aforesaid, Article 7 contains the obligations by the Governments to provide for the conditions so that corporations, joint-stock companies and other industrial or financial commercial organizations, including those dealing with foreign trade could have the right to apply to the courts of the first country both for the purpose of bringing an action and for acting as a defendant.

Article 8 of the Agreement reads that the provisions of the Agreement shall not limit the right of either of the Governments to take any actions in defense of the interests of its security.

However, this Agreement did not come into force due to the fact that new trade and credit legislation was adopted in the USA in 1974, which tied up granting most-favored-nation treatment and state credits to the Soviet Union with questions of emigration from our country (Jackson-Vanik Amendment).

The absence of most-favored-nation treatment resulted in a considerable reduction of Soviet exports to the USA, because increased customs duties (3-10 times higher than on commodities of other countries) are levied on Soviet commodities.

On June 20, 1973, the Convention on Taxation Questions was signed between the USSR and the USA, as well as side letters of the same date, providing for the elimination of double taxation on incomes, originating as a result of a number of operations in connection with reciprocal trade, and in particular, when purchasing commodities from one of the countries; in case of purchase-selling of licenses; in case of credit operations connected with financing trade; as well as incomes of commissioners, brokers or other agents. The Convention entered into effect on January 28, 1976 and will remain in force for an indefinite time with the right of termination six months before the end of any calendar year.

The opening, in accordance with the Protocols of June 22 and October 3, 1973, of the Trade Mission of the USSR in the USA and of the Commercial Office of the USA in Moscow in 1973, contributed a certain activization of the trade and economic relations between the two countries.

The development of trade relations was undoubtedly facilitated by the establishment in February 1974, in accordance with the Protocol, signed on June 22, 1973 between the Government of the USSR and the Government of the USA, of the US-Soviet Trade and Economic Council (USTEC). USTEC is a public organization of the business circles of both countries called upon to promote trade and economic cooperation and scientific and technical connections between the organizations and companies of the USSR and the USA. By now, 11 sessions of USTEC have been held and respectively 12 sessions of the Juridical Committee of USTEC, which, in our opinion, could play a more active role in the improvement of the legal and treaty basis of trade and economic relations between the two countries.

On June 29, 1974, the Long-Term Agreement on Assisting Economic, Industrial and Technical Cooperation was signed between the USSR and the USA with the initial period of the Agreement being determined as 10 years—up to June 29, 1984. In June 1984, an exchange of notes took place to prolong the agreement for ten additional years. The Long-Term Agreement is effective, though formally, but actually it is not being implemented.

The sate of political relations is an important factor determining the character of the trade and economic relations between the two countries. In their joint statement on the results of the summit meeting in December 1987, "the sides expressed their firm support of the expansion of mutually-beneficial trade and economic relations." A commission was given to convene a meeting of the Soviet-American Commission on the questions of trade and prepare concrete proposals aimed at achieving that objective, including within the framework of the aforesaid Long-Terms Agreement on Assisting Economic, Industrial and Technical Cooperation. In accordance with this commission, the regular 10th session of the Joint Soviet-American Commission of the Questions of Trade was held in Moscow in April 1988. In their speeches, the participants of the session expressed the aspiration of both sides to expand mutually-beneficial trade relations.

In our opinion, the future development of Soviet-American cooperation, the strengthening of its legal basis, will be facilitated by the restructuring of the system of management of foreign-economic relations, the gist of which, briefly speaking, is democratization and the radical breaking of the formed economic mechanism. That means that practically all of the ministries get the right from the State to independently carry out their export-import operations through the foreign-economic associations created within their systems.

In that connection, the functions of the established Ministry of Foreign Economic Relations of the USSR have changed, with the coordination and regulation of the appearance of the branch ministries on the world market becoming one of the main tasks of the Ministry. Thus, in one way or another, foreign-economic activities involve not only foreign-economic associations of the branch ministries, but large enterprises as well, at 80 of which foreign-trade firms have been set up with the final goal of their activity as export, and participation in the international labor division.

The restructuring of the mechanism of foreign-economic relations creates certain difficulties for our partners, since sometimes it becomes necessary to change the exporter and importer already known to them. To eliminate these difficulties the work of the USSR Chamber of Commerce and Industry is under-going radical reconstruction, and associations of business cooperation are being set up with a number of countries, for example, with the FRG and Italy. The main task of these associations is giving aid to Soviet and foreign organizations in finding partners, and assisting participants of associations and other organizations on management, currency-financial, legal and treaty and other matters.

It appears that the Association of Exporters at the USSR Chamber of Commerce and Industry that has been recently established is, according to its legal status, a public organization. The aim of the Association of Exporters is rendering assistance to increase the effectiveness and improve the structure of Soviet exports. With that aim in view, the Association of Exporters shall elaborate, in particular, recommendations on improving the normative acts concerning export, and on studying the positive foreign experience in that field.

The potential opportunities available for the development of bilateral Soviet-American trade and economic relations have started of late to find a realistic embodiment in concrete commercial projects, including with the utilization of new forms of cooperation, for example, such as joint ventures in the agro-industrial complex, light, chemical, medical industry, electronics, and oil and gas production. There are about fifty such projects which are under various stages of consideration with American companies, more than a dozen letters have been signed of the intentions to set up joint ventures on the territory of the USSR. Agreements have already been signed on setting up the joint Soviet-American enterprises "PRIS" (for production of automated control systems of the technological processes in petro-chemical industry) and "Dialogue" (for the production and servicing of computing equipment). The legal basis for the establishment of Soviet-American joint ventures was the adoption in the USSR of the said normative acts. The detailed analysis of the normative acts bearing on the question of the establishment and activity of the joint ventures on the territory of the USSR will be given in a report of one of the Soviet participants of our seminar.

In addition, it is worth noting, from the point of consideration of the legal basis of Soviet-American trade relations, that agreement has been reached between the Soviet and American sides at the 10th session of the Joint Soviet-American Commission on the Questions of Trade about the application to commercially viable joint ventures and other forms of commercial organizations of the provisions of the Long-Term Agreement between the USSR and the USA on Assisting Economic, Industrial and Technical Cooperation of June 29, 1974. In April 1988, a Protocol was signed between the Soviet and American sides duly supplementing the Long-Term Agreement. Apart from the aforesaid, the Protocol provides for, in particular, the development of industrial cooperation based on mutually beneficial contracts between the firms, enterprises and other respective organizations of both sides in conformity with the established practice, as well as with the laws and rules in force in both countries. We hope that the proposal by the Soviet side on working out a joint document on the principles and trends of development of the bilateral relations in the trade and economic areas will be translated into life as well.

At the present time, there is a growing interest by American business in setting up connections with Soviet partners, in our opinion. American business has become more active in the discussion of the whole complex of Soviet-American relations, in particular, foreign-economic relations. Energetic work is being carried out to organize cooperation between the members of the Soviet foreign-economic consortium for the purpose of considerable increase of bilateral trade on the basis of the joint Soviet-American enterprises proposed for the construction. The implementation of specific programmes of cooperation of the two consortiums will be carried out in accordance with the General Agreement, the basic principles of which are fixed in the Agreement signed by the representatives of the consortiums during the summit meeting in Moscow in May 1988.

The Soviet Union has always stood up for a broad development of mutually-beneficial and equal economic and trade cooperation with the USA. The dynamic development of such cooperation could be facilitated, according to our conviction, by the granting of both sides to each other most-favored-nation treatment. The real effect from granting each other most-favored-nation treatment consists mainly in the qualitative improvement of the general state of economic relations.

The restructuring of international economic relations supported by the majority of the states implies the democratization of the world economic system, full normalization of economic relations between a number of the biggest capitalist states or, as is customary to say, between the East and the West. It is absolutely obvious that the principle of most-favored-nation occupies and shall occupy one of the most important places in these processes.

LEGAL REGIME OF THE ESTABLISHMENT AND OPERATION OF JOINT VENTURES WITH FIRMS FROM CAPITALIST COUNTRIES IN THE USSR

By
V. Kuvshinov
Deputy Chief, General Legal Department, USSR Ministry of Foreign Economic Relations

Legislative basis.

The principal legislative acts regulating the establishment and operation of joint ventures with firms from capitalist countries in the USSR are the Decree of the Presidium of the USSR Supreme Soviet of January 13, 1987, No. 6352-XI, the Resolution of the USSR Council of Ministers of January 13, 1987, No. 49 with amendments introduced by the Resolution of the USSR Council of Ministers of March 17, 1988, No. 352. In addition, questions are regulated by departmental standard acts (for example, the Instructions of the USSR Ministry of Finance of February 12, 1987, No. 34 on procedure for registration of joint ventures, the Instructions of the USSR Ministry of Finance of April 30, 1987, No. 124 with amendments of November 30, 1987 on procedure of tax administration for joint ventures, the Instructions of the USSR State Bank and the USSR Bank for Foreign Economic Affairs of September 22, 1987 on crediting joint ventures and effecting settlements, as well as by the general rules of Soviet legislation (civil, labor, etc.).

If an international treaty of the USSR provides for rules other than those contained in Soviet legislation, the international treaty provisions shall apply. Thus, with countries where there are interstate and intergovernmental agreements for tax administration, the appropriate rules of such agreements shall apply.

Relationship between legislative rules and constituent instruments (the contract for the establishment of a joint venture and the Charter).

Some rules of legislative acts are of imperative nature and some rules are of dispositive nature; also, it might appear that some rules are unregulated or insufficiently regulated in the legislation. The parties can then include corresponding dispositions into constituent instruments.

Requirements at the stage preceding the establishment of a joint venture.

The permit-issuing procedure for establishing joint ventures is set up. Decisions on the establishment of joint ventures are taken independently either by the USSR branch ministries (departments), or by the Council of Ministers of Union Republics. For example, the permit for establishing a joint venture for manufacture of machine-tools where the Soviet side will be represented by an industrial association under Union Republic jurisdiction is to be issued by the USSR Ministry of Machine-Tool Building and the permit for establishing a joint venture for manufacture of consumer goods, where the Soviet side will be represented by an enterprise under Republican jurisdiction, is to be issued by the Council of Ministers of the Union Republic concerned (for example, the Council of Ministers of the Latvian Soviet Socialist Republic).

Along with draft constituent instruments, a Feasibility Study for the establishment of a joint venture is to be submitted. The Feasibility Study should, in particular, contain the following information: specifications of the technical and technological product standards, services in comparison with the world level; manufacturing and marketing forecast; exchange earnings; construction and acquisition of buildings and structures; provision of raw materials, power, labor, etc.

Legal status of a joint venture.

The joint venture is a legal entity in accordance with Soviet legislation, i.e., it enjoys the same rights and obligations as national economic organizations and enterprises which are legal entities with the exception of rules contained in special legislation. Thus, a joint venture is liable under its obligations for the entire property belonging to it, while according to the general rule of Soviet civil legislation, a legal entity is liable under its obligations for the property except for the fixed assets and current assets within the limits required for its normal operation.

Soviet law does not define a corporate form of a joint venture which is the only one unlike corporate forms in such socialist countries as, for instance, Hungary, Poland, Rumania and Czechoslovakia where it is possible to select this or that corporate form of a joint venture. By its organizational-legal structure, a joint venture in the USSR is the most similar to a limited liability company. for example, the number of participants is limited; they are specific Soviet and foreign organizations which are legal entities; the authorized capital stock is not divided into shares with free subscription therefore; profit is distributed according to the participant share; participants can make additional contributions to the authorized capital stock; transfer of shares to third parties is subject to special requirements.

Authorized activity, objectives of joint ventures.

Soviet law does not confine the sectors of national economy where joint ventures may be set up. In principle, it is possible to set up joint ventures in such sectors as industry, agriculture, construction, transport, tourism, research and development with a view to manufacturing and marketing products, affording services, carrying out works, and obtaining scientific-technical results. Thus, joint ventures may be set up practically in every sector of national economy if their activities are not prohibited by legislation of the USSR and of the Union Republics.

A new option has arisen. In accordance with the recently adopted Law on Cooperatives in the USSR, cooperatives engaged in production activity may be participants in joint ventures Hence it follows that cooperatives of the second type, i.e., consumer cooperatives are not entitled to set up joint ventures.

The objectives of joint ventures are in expanding export; reducing surplus import; satisfying the country's needs in definite kinds of industrial products, raw material or foodstuffs; and attracting sophisticated equipment and advanced technology, managerial expertise and additional material and financial resources.

Documents required for the establishment of joint ventures.

The documents may be divided into three groups:

First, documents not legally required, but which in practice are usually drawn up. They are: letters or protocols of intent recording the agreements to cooperate in a certain project and from necessary arrangements without undertaking mutual commitments and property responsibility. there may also be agreements of confidentiality and other agreements.

Second, legally required documents—a contract for the establishment a joint venture, and the joint venture Charter.

Third, there may be various foreign-trade contracts for purchase-sale of equipment and raw materials, license agreements, contracts for construction and erection operations, etc.

And finally, application for the establishment of a joint venture. The Soviet Law states that such an application is to be presented by a Soviet partner who is responsible for all necessary coordination with the authorities concerned.

Registration.

A joint venture should be registered in the Department of Public Revenues of the USSR Ministry of Finance. Joint ventures will be registered on the basis of a written application and notarized copies of an excerpt from the decision of the USSR ministry (department) or of Council of Ministers of the Union Republic on establishment of a joint venture and constituent instruments. Registration is of constitutional value since from the moment a joint venture is registered, it becomes a legal entity. Until this time, Soviet institutions are prohibited from making any deals with a joint venture at the risk of their invalidation. Banks may open accounts for a joint venture and carry out credit settlement operations only after the registration of a joint venture. The joint venture registered in the Register of the USSR Ministry of Finance will be issued a certificate of registration. Based on the certificate, the joint venture publishes an announcement on its establishment.

Constituent instruments. Contract for the establishment of a joint venture.

Two separate constituent documents—a contract for the establishment of a joint venture and the Charter are to be drawn up. The Law does not prescribe the requirements for a contract for the establishment of a joint venture which regulates relations between the participants but prescribes the requirements for the Charter which determines the legal capacity of a joint venture with respect to third parties.

The Law requires that the Charter specify the subject and purposes of the joint venture, its seat of activity, composition of participants, procedure for formation of the authorized capital stock, shares in the joint venture, composition and terms of reference of the joint venture management, decision-making procedure and the range of questions, the solution of which requires consensus, as well as the procedure for the liquidation of the joint venture. The Charter may include other provisions that are not contrary to Soviet legislation, and that relate to the specific activity of a joint venture.

In practice, the following questions are, as a rule, regulated by a contract for the establishment of a joint venture:

- name, seat of activity, term of operation of the joint venture;
- subject matter and objectives of the joint venture;
- legal status;
- total scope of production at designed capacity, total cost of the venture at designed capacity, share of the authorized capital stock in the total cost of the venture;
- setting up subsidiaries and representative offices;
- authorized capital stock, its size, contributions of participants, assessment of contributions, procedure and times of making contributions, replenishment of contributions;
- export program;
- terms of and procedure for crediting;
- formation of reserve and other funds;
- procedure for estimation and distribution of profit, payment of taxes;
- duties of Soviet and foreign participants relating to the promotion of the joint venture activity;
- managing bodies of joint ventures and their terms of reference;
- staff, labor matters;
- material and technical supply, marketing;
- forms of control, accounting and reporting;
- consequences of breach of a contract for the establishment of a joint venture, force-majeure clause;
- observance of confidentiality, in particular, after the liquidation of a joint venture;
- arbitration;
- procedure for making changes in the contract for the establishment of a joint venture, liquidation;
- entry into force.

In addition, the sides may include in the contract the timed program of action—completion of the approval and registration process, the making of complementary deals (with respect to licenses, construction, employment, leasing, etc.).

Three milestones are, as a rule, of practical importance: (1) fixing in the contract the date by which each side is to take necessary steps under applicable law for approval of the joint venture project; (2) fixing the date by which an approval of the joint venture project by the authorities concerned should be received; and finally (3) the date by which the joint venture should be registered according to the regulations of the country of its seat. If the sides wish, the contract may indicate, as a sanction, that in case of failure to observe the said times, either side will be entitled to cancel the contract.

The Charter.

The Charter should be in conformity with the statutory requirements. Apart from the requirements stipulated by the Law, the sides may include in the Charter other provisions not stipulated by the Law but which do not contradict the Law. Joint ventures must inform the USSR Ministry of Finance of any changes in the constituent documents.

Term of the joint venture activities.

In principle, a joint venture may be set up for an indefinite time. However, the Law recommends that the constituent instruments indicate the term of activities of a joint venture.

Joint venture name.

The name of the joint venture is often important to the participants, and is therefore indicated in the constituent instruments. The fate of the name after the liquidation of the joint venture may be of interest, and the contract therefore specifies the appropriate conditions.

Seat of activity.

In the contract for setting up a joint venture, its seat of activity (address) is indicated. Under Soviet Law, the location of the standing body of a joint venture is recognized as the seat of activity of a legal entity. As regards the joint venture, the standing body is its directorate. As a rule, the directorate seat is the place where a joint venture conducts its main business.

Authorized capital stock. Procedure of its formation.

The Law does not specify the minimum amount of authorized capital stock, nor does it stipulate the maximum ratio between the net capital value and the size of borrowings. In traditional international practice, if the ownership capital exceeds 50 per cent of the aggregate controllable capital, it means that the financial standing of the company is normal and is capable of actions regardless of creditors.

The law specified the ratio of the contribution of Soviet and foreign participants: the share of Soviet participants should be not less than 51 per cent and the share of foreign participants, not more than 49 per cent. [Editors Note: This ratio was changed by Ministerial Decree on December 2, 1988. The shares in a joint venture are now agreed upon by the parties.] The authorized capital stock may be made up from monetary installments and other contributions.

As a rule, monetary installments are made by transferring moneys to a bank account specially opened for this purpose. The contract for the establishment of a joint venture specifies which one of the participants is to open an account in the name of the joint venture. Contributions may be lump sum, or they may be paid in installments if there is no immediate demand for all of the money at once. In the case of installment payments, the contract should contain a provision on the amount to be contributed, and when and by whom it should be contributed. The board of a joint venture will issue appropriate documents—receipts from the paid contributions. The form of the receipts is not specified in the law.

Changes in the amount of the authorized fund may be made by the decision of the board of the joint venture. The fund may be replenished by the profit from the economic activity of the venture, as well as by additional installment payments by its participants, as agreed. Contributions to the authorized fund may be made in a non-monetary form—buildings, structures, equipment and other material assets; title deeds to land, water and other natural resources; as well as other property rights, including industrial property rights (rights to the use of inventions and know-how). Contributions may, as agreed by Soviet and foreign participants, be assessed both in Soviet and foreign currency at contract prices with due regard for the world market prices. Payment for the resources may be in lump sum or by installment. Payments are estimated for the whole period of operation of a joint venture and they are allowed as a Soviet participant's contribution into the authorized fund.

The modes of payment for the resources are defined in the constituent instruments of the joint venture, or in separate leasehold deeds. These may be in the form of the land price; allocations for agricultural development of new lands; integrated city-building assessment of territories; royalties for forest; allocations for geological prospecting; or payment for water. Payments may be based on assessments in force both in the USSR and in the partner's country.

Buildings and structures are evaluated either by their averaged value indicators published in reference books of the leading foreign firms and of the partner's country with necessary amendments, or at balance-sheet value estimated at rates and norms in force in the USSR.

A share of the authorized capital stock in foreign currency may be made up not only of cash contributions by Soviet and foreign participants, but by credits from the USSR Bank for Foreign Economic Affairs or from foreign banks. However, in this case, credits are afforded not to a participant, but to a joint venture, i.e., credits do not form a participant's contribution.

In order to evaluate a contribution to the authorized fund in the form of equipment, competitive offers for complete equipment are compared. As a rule, the principle "cost plus fee" is used, i.e., the cost of the equipment, engineering expenses of a designing firm, financing expenses and profit are evaluated. There is no major difference between the above described method of evaluation and the the method of pricing the equipment when it is imported.

Protection of investments.

One of the risks associated with foreign investments is the danger of expropriation or confiscation of the investor's property by the state where the joint venture is located. Guarantees against such confiscation or expropriation are laid down in appropriate bilateral international agreements as well as unilaterally by a legislative act of the state where a joint venture is located. The Soviet Law states that joint venture rights are protected in accordance with the legislation concerning the protection of rights of Soviet state organizations and that joint venture property may not be confiscated or requisitioned by administrative order. Execution upon property of a joint venture may be made by a decision of the USSR court or arbitration tribunal only with respect to its outstanding debts. The Soviet Union is ready to sign an intergovernmental agreement for promotion and protection of capital investments with countries wishing to do so. In such intergovernmental agreements, such questions as a commitment of the sides not to take steps for forced withdrawal of capital investments, guarantee of free transfer of payments relating to capital investments and settlement of eventual disputes may be addressed.

Transfer of profits and repayment of capital. Redistribution of capital shares.

The Soviet Law guarantees that foreign participants may transfer abroad their share of the distributed profit in foreign currency, as well as their contribution into the authorized fund made in a pecuniary and any other form. Upon the liquidation of the joint venture, the foreign participant is entitled to a pro rata repayment of his contribution, based on the residual balance sheet value of the contribution as of the moment of liquidation (after discharge of all his obligations and liabilities vis-a-vis Soviet participants and third parties).

What is to be done with transfer of profits when the products of a joint venture are fully realized on the Soviet market? Since, in accordance with Soviet legislation, the principle of self-repayment in currency is laid down, and a joint venture is granted a right to select the type of currency to receive for goods realized on the Soviet market, the sale of products to Soviet organizations having the funds in currency for import of commodities will mean inflow of foreign currency. So the profit can be transferred abroad in foreign currency or earnings in foreign currency can be compensated by commodities based on the concerted list for their further supply to a foreign participant.

The participants are entitled, by mutual consent, to fully or partially transfer their shares in a joint venture to third parties. In each particular case, such transfer will be authorized by a decision of a ministry (department) of the USSR or of the Council of Ministers of a Union Republic which took a decision on the establishment of a joint venture. Transfer by participants of their shares in a joint venture, of which products are fully realized on the Soviet market shall be authorized by the State Foreign Economic Commission. The Soviet participants have a priority right to purchase the shares of foreign participants. Admission of a new participant requires consent of all the participants and a permission, respectively, of a ministry (department) of the USSR of the Council of Ministers of a Union Republic.

It goes without saying that the permissory procedure for the transfer of shares does not apply to the cases of succession when one of the participants in a joint venture is reorganized or a decision of the authorities concerned on the transfer of shares by a participant being a public economic organization is taken. The consent of other participants is unnecessary though, of course, the participants might require the security of the fulfillment of obligations by a new participant.

Taxation. Deductions to funds. Customs duties.

Profit tax is 30 per cent. The taxable profit of a joint venture is determined as a difference between the balance sheet profit and allocations to the reserve fund and other funds intended for the development of production, science and technology. In this case, a joint venture has tax holidays during the first two years from the moment of gaining the declared profit. And what is more, the USSR Ministry of Finance has the right to abate the profit tax of a joint venture or to completely exempt it from tax payment.

To get such tax benefits, a joint venture submits to a financing body at the seat of its activity a substantiated application and necessary documents in support. The USSR Ministry of Finance makes a decision within a month's time. The Law does not set forth criteria for guidance by the USSR Ministry of Finance, but apparently the significance of a joint venture for the national economy of the USSR and for the development of export type of products of a joint venture or of services; reinvestment of the joint venture profit into its own or into another joint venture in the USSR are taken into account.

The profit tax is assessed by a joint venture on the basis of its financial plan for the next year. The planned profit is reported to the financing body not later than January 15 a.c. Tax allocations to the state budget are made by equal installments in the amount of one fourth of the annual amount of payment not later than the 15th day of the last month of each quarter.

A joint venture adds the actually secured profit not later than March 15 of the year following the reporting year. Additional payments shall be effected not later than April 1 of the year following the reporting year. If such an additional payment is a result of check carried out by a financing body or by a Soviet auditing organization then payment must be effected within 5 days after receipt of the notification. The surplus from the sum of the tax paid is included in the amount of allocations to the current budget, or it will be returned to a joint venture within 5 days on its application. For arrears in the payment of tax a penalty at the rate of 0.05 per cent shall be charged for each day of delay.

Allocations to the reserve fund and other funds intended for the development of production, science and technology are set forth in the constituent instruments.

Deductions from profit into the reserve fund are made until this fund reaches 25 percent of the authorized fund.

Unless the treaty between the USSR and a foreign state provides otherwise, a part of the profit due to a foreign participant in a joint venture after allocations to the funds and payment of the profit tax, in the event of its repatriation abroad, is levied with a tax to the tune of 20 per cent. A joint venture submits an application for repatriation of the profit abroad along with a payment order for transferring of the tax amount in the currency of transfer to the state budget to the Bank for Foreign Economic Affairs.

If a foreign participant in a joint venture has a right to tax relief under an international treaty of the USSR, then it may, prior to transferring the profit abroad, present to the USSR Ministry of Finance an application for complete or partial tax exemption. Thus, for instance, in accordance with the intergovernmental between the USSR and Canada on avoidance of double taxation the above mentioned tax should not exceed 15 per cent. The Convention between the USSR and the USA on tax administration not envisage such tax relief.

The equipment, materials and other property brought by a foreign participant to the USSR as a contribution to the authorized fund are exempt from custom duties.

Planning, financing and coordination of activities.

Joint ventures are free to adopt the plan of their operational activity. The state managing organisms neither fix mandatory plan assignments for them nor secure the marketing of products. However, to ensure normal operational activity, joint ventures establish business contacts with central bodies of the USSR and Union Republics via an institution that is higher body in relation a Soviet participant (i.e. via a ministry or a department concerned) and they come into direct contact with local managing organs and various Soviet economic institutions.

Participants may come to an agreement between themselves or they may leave to the directorate's discretion the solution of the question relating to the short-term or long-term plans of activity. For example, they may earmark in the constituent instruments the total production output at the designed capacity from the point of view of the nomenclature and the cost as well as the total cost of a joint venture at designed capacity and share (in percentage) of the products to be realized on the foreign market. In this case the plan of activity is attached to a contract for the establishment of a joint venture as an integral thereof. The sides may come to an agreement on coordination of the commercial activity of a joint venture and that of individual participants.

When framing the export program, participants have to proceed from the principles of equality and mutual benefit and, in particular, when fixing prices for delivery of raw material, materials, and components by participants of a joint venture; prices to be paid by participants for purchase of manufactured products from a joint venture, and also to proceed from applicable and international regulations against limitation of competition. For instance, it is unfeasible for a foreign founder to have a monopoly right to export products of a joint venture by way of including in the contract a provision of exclusive right of a foreign participant to market products of a joint venture on the foreign market through the marketing system of that participant in a joint venture.

Apart from the formation of the authorized capital stock, the constituent contract specifies the plan of financing the activity of a joint venture and, in particular, anticipated incomes and expenditures with breakdown by items in hard and soft currency for the next year to come, and expected credits. Credits in foreign currency may be obtained from the USSR Bank for Foreign Economic Affairs or by its consent from foreign banks and firms. Credits in rubles can be obtained from the State Bank of the USSR or the Bank for Foreign Economic Affairs of the USSR. These banks are entitled to exercise control over proper utilization of credits afforded for appropriate purposes, their security and timely repayment.

Construction of buildings and structures of a joint venture.

Under Soviet law, design and construction of various structures, including those for social needs should be the subject matter of appropriate contracts and be paid on account of the joint venture's own or loan funds. Prior to their approval, projects are liable to coordination in the procedure established by the USSR State Committee for Construction. Orders of joint ventures for erection and construction work as well as for provision with building materials should be executed by Soviet organizations on a priority basis.

The contract for the establishment of a joint venture includes specifications for structures, necessary machinery, equipment, tools and instruments and materials. Drawings of the plant and of the equipment, the schedule of construction work, the list of the purchased or leased equipment, and of repayable or non-repayable services may be attached to a contract.

Products of a joint venture.

As a rule, the contract for the establishment of a joint venture includes a separate section containing information on the products to be manufactured by a joint venture. In particular, it should have a rather detailed description on the right to manufacture on an exclusive or nonexclusive basis, main technical data, information on patents in force in the USSR and know-how to be used which should be adhered to in production. If the two sides or one of the sides transfer an appropriate technology to a joint venture, then a separate license agreement between a joint venture and the licensor is to be signed. In this case, the moment of signing a license agreement, in particular, if there is reference to the said license agreement in a contract for the establishment of a joint venture, may be arranged for the moment of registration of a joint venture or a legal entity. As a rule, the sides take into account the rapid development of production technology. Therefore, they make provisions for activities of a joint venture in the field of research and development so as to maintain the competitiveness of its products. If the sides consider it necessary, then, with a view to ensuring the required quality level it may be concurred that the personnel of one of the sides will hold key quality control posts for a definite period of time.

Joint venture management.

The question of managing bodies of a joint venture, and the procedure for their setting up and their functions heads the list and it is reflected in the constituent instruments. Special statutory regulation of this question in the USSR is close to Western statutory regulation. As a rule, two managing bodies are established - one as a top body making main decisions and another as a body for day-to-day management; there is also the third body - control. The first body is called the Board and the second - the Directorate. The control body, Board of Auditors, controls the work of the Joint Venture Directorate. The constituent instruments usually describe in detail the division of rights and duties of the said organs, their joint and several liability in performing official duties, decision-making procedure, the required quorum for making decision with the singling out of the questions which require unanimous decision. The Soviet Legislation contains an imperative norm that the Chairman of the Board and the General Director should be citizens of the USSR. [Editors Note: This requirement was lifted by Ministerial Decree on December 2, 1988.] The constituent instrument usually provide for distribution of other senior posts.

Personnel and labor conditions.

The constituent instruments (or annexes thereto) usually contain qualifying requirements for some categories of personnel, Soviet and foreign, especially requirements for personnel in responsible posts. The Soviet Legislation states that the personnel of joint ventures should be employed mainly from Soviet citizens. It means that foreign employees should be used only at responsible posts which require special qualification and knowledge. Remuneration and labor conditions of Soviet employees are regulated by the Soviet labor legislation. Soviet labor legislation extends to foreign employees, except the questions of salaries and wages, leave and pensions which should be decided in a contract of employment to be signed with each foreign employee. The joint venture Directorate should enter into a labor contract with a trade union set up at a joint venture. Its contents including social needs of the personnel is defined by Soviet legislation and constituent instruments. The USSR State Committee for Labor and Social Questions along with the All-Union Central Council of Trade Unions have a right to define the particular social insurance rules applicable to foreign employees (for instance, in case of illness and industrial accidents). Constituent instruments may also reflect the sides commitments relating to visas, training and practical study of the personnel. The salaries and wages of foreign employees of a joint venture are levied with an income tax in the order and at the rate envisaged for foreign natural persons i.e. like Soviet citizens but with the exceptions under international treaties.

Supply and sales. Foreign trade operations.

In the Soviet Union, joint ventures define, by agreement with Soviet enterprises and institutions, the order of marketing their products on the Soviet market and delivery to a joint venture from this market of the equipment, raw material, materials, completing items, fuel, power and other products as well as the type of currency to be received in payment for products sold and to pay for goods purchased.

In practice it means that joint ventures may be supplied, first, through the system of wholesale trade; second, through the system of a corresponding branch of the USSR national economy to which a Soviet enterprise - founder of a joint venture belongs and; third, with the aid of foreign economic institutions. A joint venture effects settlements either in Soviet rubles at Soviet wholesale or contractual prices with due regard for world market prices, or in foreign currency as agreed by the sides. The market is a wholesale business based on direct contracts with the user or on contracts with go-betweens- (self-financing organizations engaged in the material and technical supply or foreign economic institutions), as well as through firm shops. Settlements are effected at wholesale or contractual prices either in Soviet rubles or in foreign currency as agreed by the sides.

As regards purchase and sale on the foreign market, joint ventures have a right to carry out these operations independently without any special permission, but if they wish they may employ the agency services of Soviet foreign economic bodies. In the last case a commission contract is a suitable form of relations.

Accounting, reporting and auditing.

In line with the law, administration, business and statistical accounting shall be carried out in the procedure laid down for Soviet state enterprises. Modes of accounting and bookkeeping are defined by the USSR Ministry of Finance and the USSR State Committee for Statistics. In particular, entries should be made under supervision of a Chief Accountant whose rights and duties are defined by a legislative act. The rules of writing-off from the balance, like other rules of the bookkeeping, are common and mandatory for Soviet enterprises and joint ventures. Joint ventures are not entitled to transfer any records and information to public and other bodies in foreign states. But this, in no case, prevents participants, in the order envisaged by the constituent instruments, from acquainting themselves with the data relating to the activity of a joint venture, the status of its property, the profits and losses.

Depreciation deductions are made in accordance with the requirements applicable to Soviet state organizations. However, some Western countries are of the opinion that the Soviet balance system envisages a slower depreciation schedule and the overall balance does not cover the system of various funds. Therefore, the law permits the constituent instruments to establish another procedure for depreciation charges. The sides may reflect, in the constituent instruments, such questions as the financial year of an enterprise, language of entries, bookkeeping based on rules other than the mandatory rules and who bears the expenses for such parallel entries.

A joint venture may have a Board of Auditors for carrying out the current control over the financial and economic activities. The Board of auditors is set up in the order envisaged by the constituent instruments.

The financial and economic activities of joint ventures are checked by a specialized self-supporting auditing organization called "Inaudit" whose services are to be paid.

Insurance.

The property of joint ventures is liable to mandatory insurance at the insurance agencies of the USSR. As regards insurance against various risks of foreign trade transactions of a joint venture, the insurer is selected by agreement between the sides to the transactions.

Representative offices and subsidiaries.

A joint venture set up in the territory of the USSR can open its representative offices and subsidiaries if envisaged by the constituent instruments. Subsidiaries of joint ventures and enterprises in the territory of other countries with participation of Soviet organizations can be opened in the territory of the USSR in conformity with the regulations envisaged for joint ventures. It is necessary to indicate in the constituent instruments whether subsidiaries are legal entities or not. As regards representative offices they will not be legal entities and hence they will operate in the name of and at the expense of a joint venture.

Termination of activity and liquidation.

A joint venture can be liquidated, first, in cases and in the order envisaged by the constituent instruments and, second, by a decision of the USSR Council of Ministers, if its activity is not consistent with the purposes defined in the constituent instruments. In the event of liquidation, a foreign participant has a right to a return of his contribution in cash or in a commodity form at the residual cost of the contribution as on the moment of liquidation after clearing off his obligations vis-a-vis Soviet participants and third parties. The liquidation of a joint venture is to be registered at the USSR Ministry of Finance.

Among the cases of liquidation envisaged by the constituent instruments, force-majeure for instance, may be indicated. As regards liquidation in this case, it is feasible to provide in the Charter for setting up a liquidations commission to complete the current work, dispose of the property and satisfy the creditor's claims.

Under Soviet Legislation, apart from liquidation, reorganization is possible when one legal entity terminates its existence and another legal entity with a universal assignee continues its business. The Law indicates in general terms that in the case of reorganization of a joint venture, its rights and liabilities transfer to assignees. Therefore, it is desirable to pay more attention to this question in the constituent instruments.

Relief from responsibility.

The sides can indicate in the constituent instruments circumstances relieving them from responsibility, such as force-majeure, and also the procedure of actions for the side affected by force-majeure and the effect of failure to take such steps. Apart from the said circumstances, the sides can indicate the consequences of serious default on obligations of one of the sides.

Changes in circumstances.

The sides can indicate in a contract for the establishment of a joint venture the consequence of the onset of new circumstances which make it necessary to coordinate appropriate changes in the contract or even cancel it.

Confidentiality.

As a rule, a contract indicates what information is confidential as well as the obligation of the sides not to transfer such information to third parties and the consequences of violating said obligation.

Applicable law.

From the point of view of the applicable law problem, four groups of legal relations can be singled out:

— relations between Soviet and foreign participants in a joint venture;

- — relations between a joint venture and one of its participants;
- — relations between a joint venture and third parties;
- — relations between a joint venture and its personnel.

As to the first group of relations, there is no doubt that the personal status of a joint venture, its capacity, procedure for establishment and termination are determined according to the Soviet Legislation. However, if an agreement between Soviet and foreign participants is regarded as a foreign trade deal (and it may be regarded as such, since there is a "foreign element" and it is connected with export-import operations), then under legislation, the rights and obligations relating to the deal are determined by the place of agreement unless otherwise stipulated by the sides.

As to the second and third groups of relations, if a joint venture concludes agreements with a foreign legal entity (either a foreign participant in a joint venture or a foreign third party) they are considered as foreign trade deals with the same legal consequences in relation to the applicable law. In case of relations based on agreements with a Soviet participant or a Soviet third party, these are the relations of Soviet legal entities between themselves and they are regulated by Soviet legislation.

To the fourth group, as stated above, the law of a country of the seat of business will apply, but it is permissible to consider some questions relating to the foreign personnel.

Settlement of disputes.

The sides seek a solution of arising disputes or differences in an amicable way. In case of breach of obligations by one of the sides, the contract usually fixes a time for presentation of a written claim by another side and for the defaulter - time for a response to the claim. It might be agreed upon that such disputes will be considered by authorized representatives of the sides if an appropriate body of a joint venture failed to resolve the same.

If it does not suffice then under Soviet law, disputes between joint ventures and disputes between joint venture and Soviet state, cooperative and other public institutions are to be brought before courts of the USSR or by consent of the sides, are to be referred to an arbitration court. Disputes between a joint venture and a Soviet participant who is Soviet state or cooperative institution should be considered in the same manner. Nothing prevents the parties to a joint venture from agreeing that disputes will be considered by an arbitration court.

When negotiating a contract for the establishment of a joint venture, foreign companies often suggest that a clause for ad hoc arbitration in a third country be included in the contract, proceeding from the fact that the substantive law of the country will be applied to the contract. Meanwhile, choice by the sides of this or that jurisdiction or subordination to arbitration of any country do not create presumption in favor of application of the legislation of such a country. If the contract omits the intention of the sides to subordinate it to the law of a specific country, then the rights and obligations of the sides will be determined under legislation of a country where the deal is made.

LEGAL PROTECTION OF INTELLECTUAL PROPERTY AND ITS ROLE IN SOVIET-AMERICAN RELATIONS

By
Professor M. M. Boguslavsky
Chief, International
Private Law Division, USSR Institute of State and Law

1. During the Moscow summit in June, 1988, the leaders of the USSR and the USA reaffirmed their staunch support of the expansion of mutually beneficial trade and economic relations. Steps were taken to promote profitable exchanges between the two countries.

Soviet-American ties in the field of science, technology and culture go a long way back. Back in the 20's, the first agreements on technical assistance were signed with a number of American firms (Ford and others). Under those agreements, Soviet organizations, specifically, were given the right to use patents belonging to the said firms. At the end of the 20's provisions on exchange of technical achievements started to be included in certain agreements for example with the "Radio Corporation" company.

In the same period, a Soviet state-owned publishing house signed an agreement on the publication of Theodore Dreiser's works in the USSR. After the Second World War, the signing of an agreement with "Dresser Industries" company for purchasing licenses for Soviet turbo-drills set the foundation for Soviet-American trade in licenses.

Lately, despite a number of obstacles, trade in licenses went on, through limited in scale. In 1981-1985 American companies bought 20 licenses for Soviet inventions from Soviet organizations and sold them 5 licenses.

Mutual patenting of inventions took place, which is evident from the following figures: by January 1, 1986 1563 American inventions were patented in the USSR and 5532 patents for Soviet inventions were issued in the USA.*

Naturally, neither these nor other data in any way play the role they ought to play in the protection of intellectual property in relations between our two countries. Under the Agreement on Establishing World Organization of Intellectual Property, intellectual property is understood as the rights with respect to literary, artistic and scientific works; actors' (singers, dancers, etc) performances; recording; radio and TV broadcasting. This type of property also encompasses rights to inventions in all spheres of human activity, scientific discoveries, industrial designs, trade marks, service marks, trade names and commercial symbols. It also covers the right to protect against unfair competition as well as all other rights related to intellectual activity in production, scientific, literary and artistic spheres (Art.2).

"Know-how", which is usually understood as production secrets that do not qualify for a patent or just failed to be patented, should also be treated as an intellectual property right.

It is hard to overestimate the importance of proper protection of intellectual property for the development of foreign economic scientific, technical and cultural cooperation. Such cooperation is simply impossible without strict guarantees that the rights of patent holders and other owners of respective rights shall be observed.

As part of the policy of developing scientific, technical and cultural ties with other countries, the Soviet Union became a party to a number of treaties on protecting various types of intellectual property. In 1965, the USSR joined a major multilateral international agreement on inventions - the Paris Convention for the Protection of Industrial Property. The Patent Cooperation Treaty, signed by the USSR and the USA in Washington in 1970 became effective for both countries in 1978. In 1973, the Soviet Union entered into one of the main multilateral copyright agreements - Universal Copyright Convention.

Soviet and American participation in the same agreements create favorable conditions for promoting relations between Soviet and American organizations and companies in the field of utilizing scientific, technical and cultural achievements of both countries.

2. Utilization of scientific and technical achievements can take the following major forms in relations between the USSR and the USA: 1) granting

---

* "Vneshnyaya Torgovlya" ("Foreign Trade") No. 1, 1988, p.25.

rights to use inventions, or know-how under a general contract for the supply of complete equipment or contracts for designing, contract for engineering and similar agreements; 2) granting rights to use scientific and technical achievements when undertaking joint research works and implementing various programs and projects in the field of fundamental and applied sciences; 3) granting rights to use inventions and know-how when setting up joint ventures or during their operation; 4) standard sale, purchase and exchange of licenses.

When making use of all these forms it becomes extremely important to ensure mutual legal protection of the Sides' inventions.

Membership in the Paris Convention and Patent Cooperation Treaty makes it easier for Soviet and American firms and organizations to perform mutual patenting of inventions; specifically, the application of the rule of convention priority becomes possible. In the Soviet Union, until recently, American companies could ensure the legal protection of inventions either by getting a patent or an author's certificate. Upon receiving a patent, the patent holder has an exclusive right to the invention for a period of 15 years. Nobody can use the invention without getting the consent of the patent holder. Receipt of an author's certificate meant that the right to use the invention belonged to the state. The freedom of choice between these two legal forms was limited by the following factor: author's certificates could be issued only for medical drugs, flavor additives and food stuffs made in a non-chemical way. Patents could be issued not for the substances proper but only for methods of their manufacturing.

At present, protection of invention rights in the USSR is effected in accordance with the provisions of the Regulations for Discoveries, Inventions and Innovatory Proposals that were ratified by the Decree of the USSR Council of Ministers on August 21, 1973; a number of modifications were introduced into the Regulations on December 28, 1978.

The present legal regime is characterized by the existence of two forms of legal protection of inventions (the author's certificate and the patent).

The author of the invention can, at his will, demand either the recognition of his authorship only, as well as rights and privileges provided for in the present legislation handing over at the same time the exclusive right to the invention to the state; or the recognition of the authorship *and* exclusive right to the invention. In the first case, an author's certificate is issued, in the second one - a patent.

Soviet inventors, as a rule, used to apply for author's certificates. The following statistics published by the WIPO clearly testify to that fact: thus, for example, in 1981 out of the total 169,472 applications by Soviet citizens 169,450 were for author's certificates and only 5 - for patents; that same year Soviet nationals received 96,536 author's certificates and 1 patent.

The patent form is generally used by foreign applicants. In 1980 out of 3133 applications for patents in the USSR, 3130 were submitted by foreigners; in 1981 out of 2595 applications 2590 were submitted by foreigners, etc. All in all in 1982 201.4 thousand applications for inventions were made in the USSR; 3.5 thousand applications came from foreigners; there were issued 71.8 thousand author's certificates (to Soviet and foreign nationals) and 1.8* thousand patents to foreign applicants. American companies usually receive patents in the Soviet Union although in a number of cases there were applications for author's certificates.

An author's certificate is issued in the author's name and certifies the following: recognition of the invention, priority of the invention, authorship to the invention and the exclusive right of the state to the invention (Item 86 of the Regulations of 1973).

Exclusive right of the state to an invention, protected by an author's certificate, means that such inventions can be put to use by the Soviet state, cooperative, public enterprises, organizations and institutions in the interest of the state and owner interests without a special permission thereto.

The use of the said inventions by other organizations or persons in the course of business operations within 15 years from the date of submitting the application for an invention is possible only with the permission of the State Committee of the USSR for Inventions and Discoveries.

An author's certificate is effective for an indefinite term, starting from the date of submitting the application to the Committee. The exclusive right of the state to the invention is effective for 15 years from the date of the application.

Under Article 30 of the above-mentioned Regulations, the patent certifies the following: recognition of the invention, priority of the invention, authorship of the invention and the exclusive right of the patent holder to the invention. A patent is issued in the name of the author of the invention or his legal assignee.

---

* "Voprosy Izobretatelstva", 1983, No. 6, p.62 ("Invention Issues' In 1986 out of 79,367 protective documents for inventions 78,108 (the overwhelming majority) were author's certificates. (Industrial Property Statistics, 1986, WIPO, p.6).

The right to receive a patent for an invention as well as the exclusive right to the invention based on the patent can be transferred to other persons in an established legal order. Nobody can use an invention covered by a patent without the consent thereto of the patent holder. The patent holder has the right, either for remuneration or free of charge, to give a permit (license) for the use of the invention or to let somebody else completely own the patent. The rate of commission for issuing a license or ceding the patent completely is agreed upon by the sides. The agreement or other document testifying to the issue of a license or the ceding of the patent should be registered with the USSR State Committee for Inventions and Discoveries. Failure to observe this provision makes the said agreement or other document for issuing a license or ceding the patent non-valid.

A person, who violates the exclusive right of a patent holder to use inventions covered by patents, should reimburse all related expenses according to the procedure provided for by the civil legislation of the USSR and the Union Republics.

The Regulation contains a provision on the right or prior use. In conformity with Item 33 of the Regulation "an enterprise, organization or institution, which before an application for a patent on an invention was submitted (and in case of foreign convention applications - before the date of the Convention priority) independently from the inventor implemented on the territory of the USSR, a proposal of another person similar in nature to the invention, or carried out all the necessary preparations for doing so, retains the right to make use of the said proposal in future free of charge (right of prior use).*"

The patent statistics shown above clearly reflect the negative attitude of Western firms including American ones towards the possibilities of receiving author's certificates in the USSR. With the expansion of international economic, scientific and technical cooperation, the Soviet Union showed a tendency of departing from the practice of using author's certificates as the main form of legal protection of inventions. This became evident from the beginning the Soviet Union's entry into international treaties (Agreement between the USSR and France on Mutual Protection and Use of the Industrial Property Rights of 1970; Agreement between the USSR and Austria of 1981) and then in legislation, when changes were introduced in 1978 into the Regulation of 1973 that provided for the possibility of issuing patents for joint inventions, i.e. inventions made by Soviet and foreign authors in the course of joint work.

The next step was taken when joint ventures standard acts were admitted. The Decree No. 49 of the Council of Ministers of January 13, 1987 clearly states that rights to industrial property belonging to joint ventures shall be protected in accordance with Soviet legislation, in the form of patents in particular.

At present, new legislation in the field of inventions is being elaborated in the Soviet Union. In June, 1988 the Presidium the Council of Ministers considered the Draft Law of the USSR "On inventions in the USSR" and accepted it as a basis for further elaboration. Although old acts (the Regulation of 1973 in the first place) are still in force, attention should be paid to future changes in this field and not only in switching from the author's certificate as the main legal form of protection to the patent, but to other possible changes that, to our mind, can have a certain significance for the promotion of international cooperation.

Under conditions of perestroika that are under way in the USSR, the old legislation on inventions does not answer the requirements of the economic reform. The principle of unhindered and gratuitous use of inventions protected by an author's certificate by any Soviet state, cooperative or social organization come into direct conflict with methods of economic management, with the necessity of making industrial enterprises operate on the principles of cost-accounting and self-financing.

An author's certificate is of no financial interest either to the inventors or to the enterprises planning to use inventions in new conditions of economic activity.

The proposed introduction of patents as the form of legal protection has, to our mind, deep-rooted reasons of an internal nature that in no way diminishes the necessity to consider the requirements of international cooperation development and the external factors.

It is reasonable to believe that the expansion of mutual patenting between the USSR and the USA shall be benefited by introducing in the USSR, legal protection of chemical and medical products, simplifying the procedure of patenting Soviet inventions, setting up in the USSR a Patent Court or another body that is not a part of the patenting institution system that is supposed to ensure greater legality in matters of recognizing new technical concepts in inventions and settling disputes in respect of validity of patents issued. In the course of perestroika in the USSR and solving the tasks of creating a legal state, the role of ordinary courts of law shall increase, specifically, when settling disputes on violation of patent holders' rights in the USSR in case of unlawful use of inventions or fighting against unfair competition.

3. These changes will have their impact on the *protection of industrial designs*. The term "industrial design" in the USSR is understood as a new artistic design concept for an item that determines its look, meets relevant requirements of technical

aesthetics, is fit for industrial production and yields positive results. An artistic design concept is recognized as new if a set of its major features differs from similar concepts, known in the USSR or abroad, and is not disclosed (made known) to an indefinite number of people as on the date of priority application to such an extent as to make possible its implementation. As for the present system of legal protection of industrial designs in the USSR, it should be born in mind that it mostly copies the system of legal protection of inventions.

A certificate for the industrial design gives its creator a copyright and a right to remuneration in certain cases. An exclusive right to an industrial design covered by a certificate belongs to the state, which uses industrial designs through state enterprises and organizations. Public and cooperative enterprises and organizations use industrial designs pertaining to their sphere of activity on an equal basis with state enterprises and organizations.

A patent certifies the authorship of the person who created the industrial design and the exclusive right of the patent holder to this particular industrial design. Nobody has the right to use an industrial design covered by a patent without the consent of a patent holder. The number of protective documents issued for industrial designs is relatively small. 1990 protective documents for industrial designs were issued in 1987. Decisive measures taken in the USSR to promote design work shall, in the future, increase the role and reliability of legal protection of industrial designs.

There exists a special legal situation in respect of *know-how*. Although know-how is not protected by legislation in the Soviet Union as well as in the overwhelming majority of countries, the importance of protecting the rights of know-how owners has always been great. But such protection is ensured on a contractual basis in agreements reached by the sides.

4. In license agreements, all matters related to rights to inventions and know-how are most complex and are settled individually in each separate contract. Usually when purchasing licenses, Soviet organizations try to get a guarantee that the seller has the necessary rights to use relevant inventions, know-how, etc., having in mind that the rights of third parties, when executing the contract, shall not be infringed. This condition has a practical value especially in cases when the seller of a license does not own all the patents in question. Therefore, as a rule, a license agreement stipulates that the seller (licensor) grants the buyer (licensee) all the rights in accordance with a list of patents, mentioned in annexes to the agreement.

This is true in respect of patents belonging to the seller and in respect of patents belonging to third parties. If the seller fails to receive from the patent owner permission to use it, there is usually a provision to the effect that the seller must find another solution ensuring manufacture under license. Licenses are usually purchased on a commission basis, and the enterprise or organization for whom the license is bought, acts as a commitment.

Not only one particular enterprise but all Soviet enterprises and manufacturers of relevant products can show interest in using the license matter (invention, know-how). But it should be directly stated so in the contract. This can be done by introducing into the contract a provision that all rights granted by the licensor to the licensee are automatically valid for enterprises of the licensee's country. In the process of selling and buying licenses, the Soviet Union favors entering into contracts under exclusive license conditions.

The scope of rights under the license, the area where the subject of the license can be used, are determined in accordance with the standard conditions of international trade in licenses in a contract.

It should be stressed that the standard license agreements used by Soviet organizations do not contain any special provisions. We are talking about standard conditions used in license trading. In this sphere, a standard agreement's conditions can only facilitate the work on elaborating concrete contract provisions but in no way replace them. The specific nature of license trading is too great and the subject matter of agreements is too diverse: from medical drugs to electronics. Therefore, there are practically no identical license agreements. As a rule, agreements on license purchasing and license selling provide for technical assistance in manufacturing "licensed produce". It should also be noted that the validity period of a contract for license-purchasing is usually set at 5 to 10 years.

Matters of protection and implementation of scientific and technical achievements, inventions in the first place, also arise in the process of Soviet-American cooperation in the field of scientific research. As we understand it, agreements on cooperation should clearly define what particular inventions (know-how) are to be treated as joint ones and what as private; who is to in charge of invention's legal protection and in what countries; what are the conditions under which the parties under agreement may use the invention.

5. As mentioned above, the membership of the Soviet Union and the United States in the same international agreement - Universal Copyright Convention of 1952, sets a suitable legal basis for mutual use of literary and scientific works, music and art pieces belonging to authors of both countries. The Universal Copyright Convention entered into force for the USSR on May 27, 1973. Starting from that date, the relations in the sphere of author's rights between our states changed drastically. In the past, as repeatedly mentioned in

American publications, in the absence of a copyright agreement between our countries, a publisher in the USA could not get an exclusive right to a translation of a Soviet work of literature in the USA. Moreover, there always existed the possibility of simultaneous publication of one and the same book by a Soviet author in the English translation not only on the territory of the USA, but on the territory of Canada, England and other English-speaking countries. These conditions did not encourage the expansion of Soviet literary publications and musical performance in the USA, and, limited the volume of Soviet scientific and technical literature published. In the Soviet Union, the works of American authors were published and used in another way - without signing a contract and paying remuneration.

In conformity with the provisions of the Universal Convention, the USSR and the USA grant reciprocal national treatment to authors-citizens of their countries as well as to authors, who first published their works on the territories of these countries. Under the regulation on national treatment, each country provides protection for the works of its citizens, that were first published on its territory (Art. II of the Convention).

What provisions of Soviet legislation can be adopted when using works of American authors?

First of all, let's look at the text of Article 102 of the "Fundamental Civil Legislation" that was included into the said document by the Decree of the Presidium of Supreme Soviet of the USSR of February 21, 1973. This article provides for the following: "Translation of a work into another language with a view to its publication is allowed only with the author's or his assignees' consent.

Competent organizations in the USSR can permit the translation of a work into another language and its publication according to a procedure fixed by USSR legislation, observing conditions of international contracts or agreements to which the USSR is party. A translator gets a copyright for the translation made".*

Simultaneously, additions to Article 101 of the "Fundamental Civil Legislation" stipulated that the use of an author's work (including translation into another language) by other persons is permitted only on the basis of a contract with the author or his assignee except in cases mentioned in the Law.

So it follows that translation and publication of a work of an American author in the USSR can be effected on the basis of a contract with the owner of the copyright. Such contract must be finalized with a Soviet organization competent in this sphere.

Such contracts are usually concluded with the participation of the Copyright Agency of the USSR. When entering into these contracts, the provisions of Soviet legislation are, naturally, taken into consideration. Contracts of this type, as a rule, stipulate that all changes shall be introduced into the work during translation (e.g. abridged versions) only upon consultations and approval of the author or his assignee.

Heirs to American authors receive, in the USSR, fees for using the author's works for a period of 25 years from the author's death, starting from January 1 of the year following the year of the author's death.

In respect of protecting the works of American authors used in Soviet movies, the rule of national treatment implies that the said works can be used with the consent of the rights' owner and remuneration shall be paid in the following cases:

a) the work has been written specifically for making a movie;

b) the work has been rewritten into a movie script;

c) the work, the translated version of which has not been previously published in the USSR, has been used in a movie.

For member-states of the Universal Convention, its rules are non-retroactive. Therefore, Soviet organizations, using the works of American authors are not liable to pay remuneration for the use of works that were published in the USA before the Convention came into force for the USSR, i.e. before May 27, 1973.

Problems of copyrights arise not only in the course of cooperation in the cultural sphere. They must be taken into consideration when cooperating in the field of scientific research. If, for example, in the course of Soviet-American cooperation in the scientific sphere a work is published that has got copyright protection, the agreements between the parties should stipulate that each party has the right to translation, reproduction, publication and distribution of scientific and other works on one's own territory, but personal author's rights, especially the right of name should be observed at that.

6. Legal protection of *trademarks* is of considerable importance for expanding the scope of export-import operations and for the functioning of joint ventures. Regulation on Trademarks of 1974 (revised on April 14, 1983)* described a trademark as a designation registered in an established order and serving to distinguish goods of one enterprise from similar goods of other enterprises (item 13 of the Regulation on Trademarks). Service marks are also under protection in the USSR.

---

* "Register of the Supreme Soviet of the USSR", No.8, p.138, 1973.

A person who has registered a trademark in his name has an exclusive right to use this mark to brand goods (services) on the whole territory of the USSR. Use of a trademark without the consent of the owner in whose name the trademark was registered is forbidden. (Item 27 of the Regulation).

It is a specific feature of Soviet legislation that an exclusive right to a trademark can be given only after the mark's registration. The right to a trademark is restricted in time. The validity period of a certificate can not exceed 10 years; each consequent extension of the period is limited by 10 years (item 37 of the Regulation).

Foreign nationals and juridical persons, residing or permanently staying abroad, effect registration of trademarks in the USSR through the USSR Chamber of Commerce and Industry. In contrast to former rules, the Regulation of 1974 introduces the principle of obligatory use of registered trademarks. If a trademark has not been used for 5 years since the date of its registration, the USSR State Committee for Inventions and Discoveries on its own initiative or at the request of a third party concerned can cancel the registration of a trademark. It should be noted that when taking a decision on cancelling a registration, the following is taken into consideration: "steps taken by a foreign owner of a trademark to secure his right to a trademark in the USSR (e.g. publication of a trademark in newspapers, magazines and advertising booklets; exhibiting goods branded with trademarks at exhibitions and fairs held in the USSR; etc.)" (item 30 of the Regulation).

Regulations on Trademarks contain a rule permitting the use of geographic names or parts of other marks if they don't play a dominating role in the whole composition. Such trademarks shall be registered upon submission by the applicant of a document verifying the right to use this particular appellation of origin (item 16). This is important to note because at present in the USSR there is no special law protecting appellations of origin.

Here is some data on the registration of trademarks in the USSR. In 1986 there were only 1955 applications for registration; 570 applications were submitted by foreigners. 1651 trademarks were registered in 1986 and only 425 in the name of foreign owners.*

7. In the Joint Communique at the Moscow summit, the leaders of the USSR and the USA reaffirmed their belief that commercially viable joint ventures can play their role in further development of trade relations. In this respect, as we see it, it is necessary to pay attention to the settlement of problems of intellectual property that might arise when setting up joint ventures in the USSR. Three types of problems can arise: when setting up a joint venture; in the course of its operation; and in case of its possible reorganization or liquidation. When establishing a joint venture the authorized capital stock of the enterprise might include, besides other property, the right to use an invention and know-how as well as the right to use a trademark if this particular enterprise intends to use for its products the trademark of one of the partners, and also author's and other rights of partners. Thus, for example, an American partner can receive a patent in the USSR and offer the right to use the invention covered by the patent to the joint venture as his share in business.

During the functioning of an enterprise, various situations related to intellectual property protection might occur. The development of an invention by an employee (employees) of a joint venture can be grounds for acquiring the rights to the invention*, and in this case such inventions should belong to the joint venture as an independent subject of law with all relevant consequences. In other cases partners of a joint venture or third parties will hand over to the joint venture rights to use their own rights to the intellectual property. Those are just some of the questions concerning intellectual property that arise when using new forms of cooperation.

8. As various new forms of production, scientific and technical cooperation become more wide-used; latest processes or equipment start being developed jointly; and cooperation in the field of fundamental scientific research grows, it would be useful to elaborate standard tentative rules of legal protection and utilization of intellectual property.

These are the main provisions of Soviet legislation on intellectual property and some issues that come up in the process of cooperation between the USSR and the USA. In conclusion, it should be noted that in accordance with Soviet legislation, the USSR Chamber of Commerce and Industry acts as a patent agent in the USSR.

The USSR Chamber of Commerce and Industry performs operations on patenting Soviet inventions and industrial designs abroad; registering trademarks of Soviet enterprises and organizations; as well as patenting foreign inventions and industrial designs and registering trademarks of foreign nationals and juristic persons in the USSR. In accordance with its Charter, ratified at the Chamber's congress on February 19, 1988, the Chamber is entrusted with assignments of Soviet and foreign nationals, associations, enterprises, organizations and firms to protect their rights based on national legislation and international treaties on intellectual property protection.

---

* Industrial property statistics, 1986, WIPO, December 1987, p.13.

* "Voprosy Izobretatelstva", 1983, No.10, pp.57-63 ("Invention Issues").

ARBITRATION COURT AT THE USSR CHAMBER OF COMMERCE AND INDUSTRY: THE NEW LEGAL REGULATION

By
Professor V.S. Pozdnyakov
Head of Legal Discipline Department
All-Union Academy of Foreign Trade

At the end of 1987 and the beginning of 1988, certain changes took place in the legal regulation of the organization and activities of the permanently functioning court of arbitration at the Chamber of Commerce and Industry of the USSR. By the Decree of the Presidium of the Supreme Soviet of the USSR of December 14, 1987, the Foreign Trade Arbitration Commission (FTAC) was renamed the Arbitration Court at the Chamber of Commerce and Industry of the USSR. Such renaming was a result of the desire to ensure conformity with the names of similar arbitration institutions in the majority of other countries of the world. The same Decree approved the Statute of the Arbitration Court which replaced the Statute of the FTAC of 1975.

On the 14th of March, 1988, the Presidium of the Chamber of Commerce and Industry of the USSR approved the Rules of the Arbitration Court in place of the Rules of proceedings at the FTAC of 1975. The overwhelming majority of the regulations bearing on the organization and activities of the Arbitration Court which were in force before, have been preserved in the aforementioned new normative acts.

Thus, in particular, the provision according to which the disputes referred to the Court shall be settled by the arbitrators entered into the list approved by the Presidium of the Chamber of Commerce and Industry of the USSR remains unchanged. Each case is considered, as a rule, by three arbitrators, two of which are elected from the list by the parties to the dispute. The third is determined upon agreement between the arbitrators. Such an approach gives the parties, in the first place, a certain freedom in the election of the arbitrator who, they believe, is best suited to participate in the consideration of a specific dispute. Secondly, of special importance, it ensures the consideration of a dispute and award by a board of arbitrators each of whom not only possesses the necessary qualifications but is also independent and impartial in the discharge of his duties. This characteristic feature of the organization and activities of the Arbitration Court distinguishes the latter to advantage from ad hoc arbitration widely used in the international trade. In ad hoc arbitration, the arbitrators, appointed by the parties in many instances, if not more often than not, are not independent from the parties and therefore cannot act impartially.

The currently effective list of arbitrators of the Court was approved by the Presidium of the Chamber of Commerce and Trade of the USSR in June 1988. It includes 44 specialists - mostly doctors and candidates of legal sciences working at higher educational institutions and research institutes.

Out of the new provisions fixed in the aforementioned normative acts the following are worth noting:

1. A broader competence of the Arbitration Court has been provided for. The Statute of the FTAC of 1975 allowed it to consider only disputes submitted by the subjects of national law of different countries.

Hence, in particular, the FTAC has more than once admitted its incompetence to consider the disputes between the joint societies abroad (with the participation of the Soviet organizations) and the subjects of law of the same country. This restriction is excluded from the new Statute. Now, the Arbitration Court is within its right to consider not only the disputes mentioned above but also disputes between joint ventures established on the territory of the USSR with the participation of the firms of capitalist countries (which are recognized as juridical persons of law of the USSR) and the Soviet participants of the same enterprises.

2. In clause 3, Para 1 of the Rules, the provision on the autonomy of the arbitration stipulation that has taken shape in the practical work of the FTAC, was fixed: "The arbitration stipulation is recognized as having legal force irrespective of the validity of the contract whose integral part it is". In order to be valid, a foreign-trade contract signed by the Soviet organization must, as is known, be signed on the Soviet side by two persons authorized thereto.

If, contrary to this condition, the contract is signed only by one person on the part of the Soviet organization, such a contract is considered invalid. The Arbitration Court is nevertheless competent to consider the dispute arising from such a contract, and in particular, a dispute over the consequences of its execution, full or partial, by one party.

3. The following new provision bears upon the applied law of procedure (clause 2, Para 13 of the Rules). Apart from its Rules, the Court shall apply, while considering the matters pertaining to international commercial arbitration, the legislative provisions of Soviet law, for example the Statute of the Arbitration Court of 1987 mentioned above.

The Rules of the Basic Principles of Civil Justice of the USSR and Union Republics as well as the Code of Civil Procedure of the RSFSR and other Union Republics are not applied when cases are considered at the Arbitration Court. The questions not settled by the Rules and referred to international commercial arbitration by the legislative provisions of Soviet law, shall be settled at the discretion of the arbitration staff, subject to an impartial attitude towards the parties and so that each party was given a possibility of defending its interests in a proper way. The rule of the arbitrators acting at their discretion does not differ basically from what is contained in clause 1, Article 15 of the UNCITRAL Arbitration Rules.

4. A number of new provisions of the Rules aim at preserving the commercial secrets of the parties to the dispute. For that purpose, as different from the regulations previously in force, the cases at the Arbitration court shall be considered at the closed meetings (Para 25 of the Rules). Persons not participating in the process, students, for example, may attend the meeting only with the permission of the arbitration staff and with the parties' consent. The arbitrators as well as the speaker shall keep secret the information concerning the disputes settled by the Arbitration Court (Para 7 of the Rules). The publication of the information on the awards of the Arbitration Court is also limited (Para 42 of the Rules).

5. The level of the arbitration fee, though it remains quite moderate as before, is somewhat increased. Where the claimed amount is from 5,000 up to 10,000 rubles, the fee is 4 per cent, but not less than 250 rubles. The arbitration fee where the claimed amount is 1,000,000 rubles is equal to 8,150 rubles. The arbitration fee also includes the fees to be paid to the arbitrators.

SECOND US-USSR JOINT LEGAL SEMINAR

JANUARY 1989
WASHINGTON, DC
AND
NEW YORK CITY

AT THE OPENING OF THE SECOND US-USSR JOINT LEGAL SEMINAR

By
Honorable C. William Verity
U.S. Secretary of Commerce

I am delighted to welcome you to the second in a series of US-USSR legal exchanges. US-Soviet trade is a very popular subject in the media today. Clearly, there is great interest in improving our commercial relations. But interest alone is not enough upon which to build a solid business relationship. By providing a forum for discussing our commercial legal systems and procedures, this seminar will help us transform general interest into concrete business relations.

President Reagan and President Gorbachev have given their strong support to expansion of mutually benefical trade and economic relations. Toward this end, the Commerce Department is working with many of the Soviet organizations that have traditionally been involved in trade as well as those organizations which have newly entered the foreign trade arena. This seminar, organized in concert with the Soviet Ministry of Foreign Economic Relations, will help American and Soviet businesses to create sound ties because these ties will be founded on a more complete understanding of each other's legal systems.

Deputy Minister of Foreign Economic Relations Kachanov and I established this Seminar at the April Meeting of the Joint U.S.-U.S.S.R. Commercial Commission to foster a better understanding of laws and legal practices in the United States and the Soviet Union. We recognized that just as our economic systems differ, so too do our legal systems. These differences should not stand in the way of trade; rather, for every nation, law is the foundation upon which sound business relationships are built. As trade between our two countries increases, it is essential that we understand the laws and regulations of both countries that govern that trade.

The First Joint Legal Seminar held in Moscow last September was a resounding success. Through the presentations given by Senior U.S. Government and private sector counsel as well as by Soviet lawyers, the learning process was begun. This distinguished Soviet delegation will build on the discussions begun in Moscow and will provide an update on developments in their law.

In my discussions with American business representatives, it is clear to me that American business is eager to explore the commercial opportunities in the Soviet market. The large turn out here today is concrete evidence of this interest. In fact, we were so overwhelmed by the number of attendees, that we were literally forced to relocate the Monday and Tuesday sessions of the Washington seminar to the auditorium, the largest room available at the Commerce Department.

As they seek to build commercial relations, American and Soviet business people will turn to you, their legal counsel, for guidance. It is my hope that this series of legal exchanges will better prepare counsels on both sides to meet this challenge.

As every good lawyer knows, in order to practice law successfully, an attorney needs to know not only what the laws and regulations are, but how they have been interpreted and how they may be applied in the future. Some people (not lawyers) say that in the United States we go overboard in publishing this type of information. In the past, American lawyers have found it difficult to access this kind of information in the Soviet Union. I am pleased to learn, however, that this is changing, that laws and regulations are increasingly being made available to everyone and that there is greater uniformity in their application. A seminar like this is evidence of the greater openness of the Soviet legal system. An increased understanding of the respective legal practices of each country, combined with a greater openness and accessibility to the body of legal experience in both countries can only serve to improve the level and quality of our bilateral commercial relations.

As a demonstration of our continued commitment to increased understanding of our legal systems, at the end of the Washington Seminar, General Counsel Brumley and Soviet delegation leader Nesterov will sign a protocol affirming the continuation of these legal seminars and creating working groups on specific commercial legal issues of interest to both sides. These working groups will allow Soviet and American legal experts in such areas as intellectual property rights and commercial contracts, to discuss in detail the development and application of the laws in each country. Such in depth discussions will enhance meaningful dialogue between participants in the future legal seminars.

I would like to wish all the participants of this seminar success in their meetings both here in Washington and next week in New York, and in future exchanges as the learning process continues.

CERTAIN ISSUES OF LEGAL IMPROVEMENT OF FOREIGN ECONOMIC RELATIONS OF THE USSR

By
M. M. Nesterov
Chief of General Legal and Treaty Department,
Ministry of Foreign Economic Relations of the USSR

The restructuring and improvement of the management of the total economic mechanism could not leave out the reorganization of foreign economic relations. Naturally, the pattern of foreign economic relations at any given time must take into account the specifics of foreign markets, because foreign-economic elements of the Soviet economic mechanism reflect the features of the world market in general.

However, efficient foreign economic activities are not feasible without a proper legal basis. And foreign economic activities are in need of such laws, on the basis of which the USSR state interests can be protected.

This report elucidates in general the following issues:

1. Involvement of a wider circle of participants in foreign economic cooperation and their legal status. Problems of converting to full-scale cost-accounting.
2. Bodies of state administration of foreign economic relations and means of securing interests of the state in this field.
3. New forms of foreign economic cooperation.

Involvement of a wider circle of participants in foreign economic cooperation; their legal status. General problems of converting to full-scale cost-accounting

Until recently foreign-trade transactions, i.e. export and import of goods and services, creative work results (i.e. patents and know-how) have been entrusted to:

- All-Union foreign economic associations within the system of the Ministry of Foreign Economic Relations of the USSR;
- All-Union foreign-trade associations of the USSR sectoral ministries and government departments, operating on a cost-accounting basis
- Republican foreign-trade associations at the Councils of Ministers of the Union Republics;
- Foreign-trade firms of research-and-production and production associations, enterprises and organizations.

At present, by force of the Resolution of the Council of Ministers of the USSR of December 2, 1988, all Soviet enterprises, associations and producer cooperatives, whose output possesses competitive capacity, have been introduced into the sphere of foreign economic relations. The right to have direct access to foreign markets is granted to the above organizations from the Ist April, 1989. They may perform export-import transactions, setting up for these purposes foreign-trade firms, or do it on a contractual basis through foreign-economic agencies. The State is not liable for their commitments.

In view of the dissolution of the Ministry of Foreign Trade of the USSR and the State Committee of the USSR for Foreign Economic Relations, and establishment of the Ministry of Foreign Economic Relations of the USSR (hereinafter referred to as the MINFER) in compliance with the Decree of the Presidium of the Supreme Soviet of the USSR, the All-Union associations of the former Ministry of Foreign Trade of the USSR and the All-Union associations and All-Union departments of the former State Committee of the USSR for Foreign Economic Relations have been included within MINFER.

Under USSR legislation, juridical persons posses special legal capacity. The special legal capacities of the All-Union associations within the system of MINFER are defined in their Articles of Association or Charters and mean, in fact, that an All Union association is engaged in export and import of goods and services as per nomenclature assigned to such association. The All-Union foreign trade associations of the USSR sectoral ministries and government departments are in a similar position, as provided for by the Regulations for such associations, approved by Resolution No. 1526 of the USSR Council of Ministers of December 22, 1986. The above measures are aimed at concentrating the total export and import of goods of one and the same nomenclature, so as to prevent access to foreign markets of several exporters and importers of the same output or services (for instance, services related to technical assistance in construction of any projects in the USSR and abroad, and in implementing such projects on a contract basis).

The process of transfer of foreign-trade organizations entirely to the USSR sectoral ministries and government departments, or transfer to them of partial export-import operations with respect to certain goods, is proceeding quickly. For instance, the following (inter alia) foreign-trade associations have been transferred to the sectoral ministries and government departments from the former Ministry of Foreign Trade, and lately - from the Ministry of Foreign Economic Relations: "Medexport", "Mezhdunarodnaja Kniga", "Sojuzplodimport", "Strojmaterialintorg", "Electronorgtekhnika", "Aviaexport", "Avtoexport," "Exportles", "Tractorexport", "Stankoimport", "Enhergomashexport", "Sojuzchimexport". At present there are 22 associations within MINFER.

The special legal capacities of the Republican foreign-trade associations are somewhat different. These associations draw resources of republican and local industries into the foreign-trade turnover. Therefore, regarding the nomenclature of certain goods, especially consumer goods, their foreign-trade transactions can be identical to the nomeclature of goods of All Union associations within MINFER and sectoral ministries and government departments.

From the Ist of December, 1988, Republican foreign-trade associations have been set up in all Union Republics, except Turkmenia, where such work is drawing to its end.

It is worth mentioning, that although foreign-trade organizations "Lenfintorg" and "Dalintorg," engaged in coastal and frontier trade on account of local resources of the north-western and far-east regions of the country respectively, have been transferred to "Rosveshtorg" - a Republican foreign-trade association, - they continue to perform commercial transactions as independent juridical persons.

As for foreign-trade firms of enterprises and organizations, they have the status of independent juridical persons. In the first case they are participants in foreign-trade transactions, responsible for their implementation. In the second case the enterprise or organization proper is the participant in a foreign trade transaction. An enterprise may be a participant in a foreign-trade transaction, whether or not it has set up a foreign-trade firm, in case of direct production, scientific and technological ties, or in case of single commercial transactions with enterprises in other socialist countries.

Diverse foreign economic organizations, being set up at present in the USSR, including associations of business cooperation with foreign countries, inter-sectoral associations, consortia, joint-stock companies, etc., must serve the purposes of ensuring active involvement of Soviet organizations (entitled to access to foreign markets) in foreign economic activities, and developing new forms and directions of foreign economic activities. The relations between participants in such organizations are determined on a contractual basis, and are to be fixed in the Articles of Association or Charters.

Under the new conditions the problem arises of transferring foreign-trade organizations to full-scale cost-accounting. Cost-accounting, as it is understood in the USSR is a method of planned management and guidance of economy, based on self-repayment (i.e. surplass of income) and self-financing (i.e. when economic activities are performed without financial support from the state budget facilities). Cost-accounting is characterized by property and operations independence, self-management based on democratic principles, profitability of activities, material incentives and pecuniary responsibility for the end results of work.

Cost-accounting principles were introduced, in the main, in the practical work of foreign-trade associations in 1978, when Resolution No. 416 of the USSR Council of Ministers of May 31, 1978 approved the Regulations for such associations. Thus, the property independence of the associations has been secured by assigning material and financial resources to them with the right to operations management, while operations independence has been ensured by the Articles of Association/Charters defining their terms of reference.

The task at present is to ensure further development of cost accounting, and to go over to full-scale cost accounting, self-financing and self-repayment. The proposals being drafted on this issue are based on the USSR Law on State Enterprise of 1987, and provide, in particular, for the following:

- Foreign trade associations will proceed in their activities from economic norms or regulations to be fixed by the Ministry for a long term, and from plans to be prepared by foreign trade associations proper (self-management and self-planning);
- Profit formed as a surplus of income will be the basis of economic activities of the associations.
- Formation of independent monetary funds of the associations, namely: funds for development of foreign economic activities, social development funds, material encouragement funds.

The associations' income will be made up mainly by commissions—depending on the value of exports sold on foreign markets and imports delivered to the national economy of the USSR. The associations' costs include the costs of maintenance of their staff, and trade and operations costs;

As for legal relations between foreign economic organizations and domestic producers and consumers, including joint enterprises, it should be noted that on the Ist of August, 1988, Resolution No. 888 of the USSR Council of Ministers of July 25, 1988 became effective. This Resolution approved in particular the "Main provisions of regulating contractual relations in export-import transactions".

Bodies of state administration of foreign economic relations and means of securing interests of the state in the field.

The system of administration of foreign economic relations by the State has been reorganized recently in large measure. Previously it was the Ministry of Foreign Trade and the State Committee for Foreign Economic Relations of the USSR who played the leading role in this field. Now that a considerable number of enterprises subordinate to other ministries have direct access to foreign markets, the State Foreign Economic Commission of the USSR Council of Ministers has been set up to ensure centralized administration of this sphere of economy. This Commission is in charge of all activities of the ministries and government departments with respect to implementation of their foreign economic ties, however it cannot interfere in their foreign economic activities proper. That means bringing to a higher level the task of coordinating the activities of the bodies of state administration realizing trade and economic, monetary and financial, scientific and technological ties with foreign countries.

Any matters of foreign economic relations requiring the approval by the USSR Government are to be referred by the ministries and government departments to the Commission for consideration. It is worth mentioning that on certain matters the Commission may make decisions on its own, which are to be issued as Resolutions of the Council of Ministers of the USSR.

With a view to pursuing a uniform foreign economic policy of the USSR, securing interests of the State on foreign markets, and further improving the system of administration of foreign economic ties, the Ministry of Foreign Economic Relations was set up in January 1988 in place of the dissolved Ministry of Foreign Trade and the State Committee for Foreign Economic Relations of the USSR. The new Ministry was entrusted with the following functions: it is responsible for the development of foreign economic relations, it controls the matters of securing the USSR state interests on foreign markets and pursuing a uniform trade and economic, monetary and price policy, especially in the form of methodological aid and provision of information. The role of the Ministry of Foreign Economic Relations is further enhanced by the above-mentioned Resolution of the USSR Council of Ministers, by force of which any Soviet organization may be engaged in foreign economic activities.

Foreign economic activities in the field of international tourism are ensured, as before, by an independent body - the State Committee of the USSR for Foreign Tourism.

Vnesheconombank of the USSR ensures financing, crediting and financial settlements in the sphere of foreign economic relations, and controls the implementation of the foreign currency plan. Of late, Vnesheconombank has been entrusted with the task of promoting the creation of joint enterprises and developing direct cooperative ties.

With a view to enhancing the role of the customs service, it was withdrawn from the Ministry of Foreign Trade of the USSR (which is dissolved at present) and is now directed by the General Department of State Customs Control at the USSR Council of Ministers.

The quest for the most rational combination of diverse methods of administration of foreign economic relations, especially of economic methods and those securing interests of the State, is continuing. The system of planning is being improved and becoming more flexible. The planned character of foreign economic relations will be ensured in large measure through a system of state orders and limits. This system is to ensure, in the first place, the fulfillment of obligations of the Soviet side under international treaties/contracts. It is possible that the system of licencing; of imports and exports widely used throughout the world, will also be used in future. We bear in mind at the same time the need to work out a system of measures ensuring effective control over foreign economic relations namely-introduction of appropriate customs regulations, collection of duties and charges, and employment of non-tariff regulation institutions. This system of measures will obviously take into account the international commitments of the USSR, as well as the possibility of employing this system for current control over foreign economic relations of the USSR.

New Forms of Foreign Economic Cooperation.

New forms of economic cooperation with Western countries are coming to life. First of all, enterprises are being created in the territory of the USSR. The legal bases for the creation of a joint enterprise are the following enactments passed in January 1987: Decree of the Presidium of the Supreme Soviet of the USSR "On Issues Related to the Setting Up on the Territory of the USSR of Joint Enterprises, International Associations and

Organizations with the Participation of Soviet and Foreign Organizations, Firms and Bodies of Management, and on Their Activities" and Resolution of the Council of Ministers of the USSR "On the Procedure of Setting Up on the Territory of the USSR of Joint Enterprises with the Participation of Soviet Organizations and Firms of Capitalist and Developing Countries, and on Their Activities".

In September 1987 the CPSU Central Committee and the Council of Ministers of the USSR passed a Resolution "On Additional Measures to Improve Foreign Economic Activities in the New Conditions of Economic Management". This enactment has considerably simplified the process of decision-making with respect to the creation of joint enterprises with firms from capitalist and developing countries. The USSR ministries, government departments and Councils of Ministers of the Union Republics are given the right to make such decisions on their own. With a view to enhancing foreign partners interest in setting up joint enterprises on the USSR territory, such joint enterprises are exempt from paying tax on profit for two years after the time of receipt of the declared profit. Foreign business participation in joint enterprises in the USSR is becoming even more attractive in view of the mentioned Resolution of the USSR Council of Ministers of December 1988. In compliance with this Resolution, in particular, a foreign participant's share in the authorized fund of a joint enterprise is not limited, but to be negotiated by the partners. Foreign citizens may become chairmen of the boards or directors-general of joint enterprises. Earlier Resolutions of the Council of Ministers of the USSR on joint enterprises and other matters have been amended.

Firms in capitalist and developing countries show interest in establishing joint enterprises on the USSR territory. At present over 140 joint enterprises with Western firms are registered at the USSR Ministry of Finance.

Legally, a joint enterprise set up on the USSR territory is a juridical person under the USSR legislation, and bears resemblance to a limited-liability company known in Western law.

New forms of cooperation are not limited to joint enterprises alone. Broad vistas are opened up for agreements on bilateral and multilateral scientific-technological and industrial cooperation between Soviet associations, enterprises, organizations and Western firms on a long-term and mutually beneficial basis.

In the light of the above, the extension of cooperation with Western firms in setting up joint research and design organizations, engineering, marketing and advertising firms, joint servicing and maintenance of machinery exported from the Soviet Union looks promising.

New draft enactments. Law on foreign trade and other foreign economic activities. Customs Code.

The drafting of the USSR law on foreign trade and other foreign economic activities began in 1982 in compliance with the existing program of drafting the USSR statutory acts and decrees of the USSR Government.

The drafting of such law is necessitated by the fact that a great number of enactments on the issues of foreign economic activities are in force at present in the USSR, which were passed at different times, even as far back as in the twenties and thirties. Some provisions of these enactments became outdated and lost their practical meaning. Moreover, foreign economic activities are becoming more and more multiform. New subjects in legal relations crop up in the foreign economic sphere. The pattern of administration in this field changes accordingly. Therefore, the necessity of systematization and codification of foreign trade legislation, adoption of a single act or law regulating this important field of foreign relations has become pressing.

On the 12th of August 1988, the USSR Government passed Resolution No. 1004, by force of which the Harmonized Commodity Description and Coding System widely used in world practice will be introduced in the USSR as a basis of the Customs Tariff from the Ist of January 1991.

The drafting of other enactments aimed at improving and developing the USSR foreign economic ties with foreign countries is also carried on. Specifically, under consideration is the question of adopting laws regulating competition, consumer legislation, products liability law, law on foreign currency operations regime, stock company legislation, law on the establishment of joint-enterprise zones, laws on economic activities of Soviet enterprises and organizations abroad, and others.

This report gives a general picture of certain issues relating to the improvement of foreign economic ties of the USSR. The above issues will be considered in detail in the reports of other Soviet participants in this Seminar.

In conclusion I would like to emphasize the following. The Soviet Union, being a part of the interrelated world economy, is also an active participant in the international trade system. Therefore, the USSR policy to adhere to [become a member of] the GATT is just natural and, in our opinion, will contribute to the improvement of economic and political conditions of international trade, expansion of trade between the USSR and parties to the GATT. The policy to adhere to [become a member of] the GATT is supported by a complex of measures aimed at the improvement of foreign economic activities of the USSR and the administration of foreign economic ties. Such measures, as it was mentioned above, considerably extend the Soviet organizations' rights in the sphere of foreign economic activities and create further possibilities for business cooperation with foreign countries, including those with the framework of the GATT. There can be no doubt that, having adhered to [become a member of] the GATT, the USSR will fully abide by the regulations, procedures and traditions of that institution in the same way as it strictly observes its international commitments.

COOPERATIVES IN THE USSR
(Legal Regulation)

By
I. A. Prikhodko
Main Consultant
USSR Ministry of Justice

In May of last year the Soviet parliament approved the law "On Cooperation in the USSR." This law went into effect on 1 July. The new law is an important link in the legal support of economic and political reforms being carried out by the new Soviet administration.

The publication in 1987 of the law, "On the State Enterprise (Association)," and the law, "On Individual Labor Activity," preceded the approval of the Law on Cooperatives. These laws, if viewed together, constitute the legal basis for restructuring the economy. They give scope to economic initiative, business cooperation, and enterprise, both by state and cooperative enterprises, and by individual citizens.

The consistent development of the cooperative movement in the country, toward which the new law is directed, should turn cooperation into a far-flung system, organically linked with the state sector of the economy and with individual labor activity of the population.

The Law on Cooperatives guarantees Soviet citizens the right to unite into cooperatives to conduct joint economic and other activity. The procedure for the creation of cooperatives is utterly simple. To organize a cooperative it is sufficient to have three individuals who desire to open their own business.

According to the new law, every citizen who has reached 16 years of age who expresses the desire and is capable of taking part in accomplishing the goals and tasks of the cooperative can be a member of a cooperative, unless otherwise provided for by legislation of the USSR and the union republics.

In cases provided for by law or by regulation of a specific cooperative, state and social enterprises and organizations, as well as other cooperatives, may participate in a cooperative, with the rights of collective members. Relationships between cooperatives and their collective members are structured on a contractual basis.

The creation of a cooperative does not depend on receipt of any special permission from Soviet or economic organs. However, in those cases when a sector of land or other natural resources is required for the activity of a cooperative, in order to register its charter the cooperative must first receive agreement to grant these resources to the cooperative from the appropriate state organ, or organization. This rule relates especially to new types of agricultural cooperatives, as well as cooperatives for mining, extraction of minerals and logging, since the land, its mineral resources, forests and other natural resources in the USSR are the property of the State.

Any cooperative is considered created from the moment its charter is registered at the local soviet organ—the Executive Committee of the rayon or City Soviet of People's Deputies at the location of the cooperative. The Executive Committee of the local soviet does not have the authority to refuse to register the charter of a cooperative, unless it contains provisions that are in conflict with Soviet laws. Refusal to register a charter may be disputed in court.

According to the new law, cooperatives may be created in agriculture, industry, transport, trade, public catering, in the sphere of paid services and other sectors of production and social and cultural life. Cooperatives may engage in any types of activity, except those that are prohibited by law. The law prohibits, for example, the manufacture and sale of pornographic articles or narcotic devices, the growing and cultivation of crops that contain narcotic substances, the running of gambling dens and dens of depravity, procuration, etc. Clearly, cooperatives also may not engage in such activity.

The law divides all cooperatives into two main types: producer and consumer. This division is based on the economic distinctions in the activity of the cooperatives of these two types. The former are created to produce goods, products and works, as well as to render paid services to enterprises, organizations and citizens. The basic content of their activity consists of commodity production, and the sale of products, goods and services to other consumers.

Producer cooperatives may be created for the production, storage, processing and sale of agricultural products and industrial goods; the manufacturing of consumer goods; the collection and processing of secondary raw materials and industrial byproducts; the repair and maintenance of equipment; industrial, road and residential construction; retail trade and public catering; personal services and the organization of leisure-time activities; medical assistance; rendering of legal, travel, scientific research, design, construction, assimilation, sports and health, and other services; as well as [goods and services] in the spheres of fishing and production of fish products; selling of timber; extraction of minerals and other natural resources, and in other fields of economic activity. The activity of such cooperatives is based on the individual labor of their members.

Cooperatives of the second type, consumer cooperatives, satisfy the needs of their members and other citizens for commercial and personal services, as well as those of members of the cooperatives for housing, dachas and garden plots, garages and parking places for automobiles, and for social, cultural and other services. Along with these functions, consumer cooperatives may also develop a variety of production activities; i.e., be cooperatives of a mixed type.

Cooperatives may both use their own property or lease property from state enterprises and individual citizens. A cooperative may also lease land and other natural resources.

State organs contribute to the creation of cooperatives for the production of products or services based on small and medium sized enterprises. This occurs in cases when the activity of industrial, agricultural, construction and other enterprises under their jurisdiction are halted, due to unprofitability, insolvency, a lack of demand for their products or services or for other reasons provided for by the law "On the State Enterprise." The state organs have the right to sell, transfer or lease to newly created, as well as existing cooperatives, the property of enterprises being liquidated, on terms agreed by the parties.

The property of a cooperative is formed by the monetary and material contributions of its members, the products produced by the cooperative, the income from their sale, revenues from the sale of stock shares, other securities of the cooperative, and bank credit. State, cooperative and other social enterprises, as well as citizens who are not members of the given cooperative but work in it by labor agreement, may take part in the formation of the property of the cooperative, on a contractual basis, through monetary and material contributions.

The property of enterprises and organizations created by a cooperative, as well as the property of inter-plant enterprises and organizations, in accordance with share participation, belongs to the cooperative.

Structural subdivisions may be created within a cooperative (including territorially stipulated): departments, shops, farms, workshops, stores and others. A cooperative has the right to open affiliates and representatives in other cities.

The law establishes legal guarantees for protection of cooperative property. Article 8 of the Law states that cooperative property, as a form of socialist property, is inviolable, and is protected by the State. It is protected by law on an equal basis with state property. The property of a cooperative may be confiscated only by decision of a court or state arbitration, in accordance with their jurisdiction. The right to dispose of property belongs only to the cooperative itself.

The cooperative bears independent liability for its obligations, the extent of all property belonging to it, including fixed capital. The State does not bear liability as to the obligations of a cooperative. The cooperative does not bear liability as to the obligations of the State and those of its members.

Interference in the economic activity of a cooperative by state and cooperative organs (alliances or associations of cooperatives) is not permitted. In the event that a state administrative organ or cooperative organ publishes an official document that does not correspond to its jurisdiction, or that violates legal requirements, the cooperative has the right to appeal to a court or state arbitration, requesting that the document be declared wholly or partially invalid.

Losses caused to the cooperative as a result of fulfillment of instructions of state and cooperative organs that violate the law on cooperatives, as well as a consequence of the improper fulfillment by cooperative organs of their obligations with respect to the cooperative, are subject to compensation by these organs. Disputes about compensation of losses are decided by court or state arbitration.

Economic and production relations of the cooperative with state, cooperative and other social enterprises, organizations and citizens who are the consumers of its products or services, or the suppliers of material and technical resources, and all of its economic operations, are implemented solely on a contractual basis. The contract is the sole legal and economic document regulating all of the indicated economic and production relations of the cooperative.

The sale of a product of its own manufacture is carried out by the cooperative based on free prices. Under the law, the cooperative sells products and goods of its own manufacture, and accomplishes works and provides services, according to prices and rates established by the cooperative, on the basis of an understanding with consumers, or independently. Only in certain cases, specified in the law, are prices for the products of cooperatives limited by the State.

Thus, products or services, produced in accordance with agreements concluded for the fulfillment of a state order, as well as manufactured from raw materials or materials furnished to the cooperative from state resources, are sold by the cooperative according to centrally determined prices. However, if in similar cases state enterprises are permitted to establish contractual prices for their products, the cooperative may also do so.

The cooperative participates in the formation of the state budget by paying taxes and making other payments provided for by law. The income of the cooperative, as well as the personal incomes of members of the cooperative and of persons working in it by labor contract, are taxed. For the purpose of increasing the interest of the cooperative in expanding production, taxation of its income (profit) takes place according to firm rates set for no less than 5 years. It is provided that taxes will be levied according to a progressive scale from the individual incomes of citizens, from their work in the cooperative.

In those cases when the cooperatives sell their products according to centrally established prices, taxation of the members of the cooperative and of persons working therein according to a labor contract is carried out at the rates set for workers and employees of state enterprises.

The law grants cooperatives broad opportunities for investment in insurance and banking matters. Cooperatives and their associations have the right to create cooperative institutions, and to determine their conditions, procedures and types.

A cooperative can grant credit from its own funds to other enterprises and organizations, under conditions determined by agreement of the parties, including on the amount of interest for the use of this credit.

Alliances of cooperatives have the right to create economic accountability [khozraschet], branch or territorial cooperative banks. The cooperative banks mobilize the free monetary funds of cooperatives, under agreed conditions. They may also involve the funds of other enterprises, organizations and citizens, and resort to loans from specialized USSR banks. A cooperative bank may use its funds to take part, on a contractual basis, in the economic activity of a cooperative. The charter of a cooperative bank shall be registered in the USSR State Bank.

A cooperative may place a portion of its free monetary income in state internal lottery loan bonds, bank certificates and other securities that are issued. Income from such operations goes to the cooperative. Cooperatives and their alliances (associations) may issue stock shares for sale to members of the cooperative, persons working in the cooperative by labor contract, and enterprises or organizations. Stock shares are issued by a cooperative or association of cooperatives in the procedure defined by USSR legislation, and are secured by all their property. The overall value of a share should not, as a rule, exceed the amount of gross income for the year. Members of the cooperative enjoy priority right to acquiring shares. The cooperative or association of cooperatives establishes the nominal value of the stock shares, which is constant for the entire period of their circulation, and the procedure for payment of annual income into the shares. The rate of annual income may be adjusted by a general meeting of the cooperative association, with participation of the stockholders, depending on the level of profit-making capacity and the tasks facing the cooperative association.

Permission to issue shares is given to the cooperative or association of cooperatives by the appropriate financial organ, in coordination with the USSR bank institution that provides credit and account services to the cooperative association, after checking its solvency. In case of refusal, the indicated financial organ gives the cooperative or association an explanation of its reason. A refusal may be appealed to a higher financial organ. The State does not bear liability as to the obligations of a cooperative association associated with the issuance and handling of shares.

Foreign economic activity of cooperatives and their associations is carried out on the basis of currency self-support and self-financing. Cooperatives carrying out production activity and their associations, the products (works, services) of which are competitive on the world market, have the right to carry out direct export-import operations. Cooperatives and their associations may also carry out their operations of exporting and importing goods or services on a contractual basis through appropriate foreign trade organizations. Cooperatives and their associations have the right to conclude foreign trade operations with foreign border trade partners, in the established procedure.

Foreign currency funds obtained from the export of goods or services may be used by cooperatives and their associations, the established deductions to the state, to import equipment, raw materials, materials, and other goods or services necessary to develop production and increase commodity turnover, and to strengthen the material and technical base of the social and cultural sphere.

Cooperatives carrying out production activity may create joint enterprises, international associations and organizations with corresponding organizations of CEMA member countries and other socialist countries, and joint enterprises with firms in capitalist and developing countries. Cooperatives determine by agreement with foreign partners the specialization of joint enterprises and the volume and structure of production, based on the demand for the products or services, and the conditions of sale, including prices. Joint enterprises shall be created both on USSR territory and on the territories of foreign countries.

Cooperatives and their associations shall develop scientific-technical and production cooperation with corresponding enterprises in foreign countries; organize joint scientific research, drawing and design, and experimental works; create international collectives of specialists; share scientific and technical documentation according to the established procedure under mutually agreed conditions; and render assistance in cadre training.

For the purpose of developing effective cooperation with cooperative organizations in other countries, cooperatives and their associations may, in accordance with their charters, take part in the activities of international cooperative organizations, and in holding international exhibitions and fairs.

USSR banks may grant cooperatives and their associations that are carrying out foreign economic activity credits in Soviet and foreign currency, as well as in transferable rubles, with repayment of these credits from currency earnings, funds from the sale of the imported products, or other funds of the cooperatives and their associations.

Cooperatives and their associations bear economic liability for the effectiveness of their foreign economic activity and the rational use of currency funds in the interests of the development production. They make up damages in case of nonfulfillment of export obligations and other contractual obligations to the full extent of their property, including currency funds, and also pay fines and other sanctions to the foreign purchaser in currency from their currency savings, if they were at fault for the violation.

Work may be done in a cooperative both by members of the cooperative, and by hired workers. To attract citizens into the cooperatives, the Law established that persons working in cooperatives retain their full pensions, allowances at their place of study, and wages at their main place of work. The maximum amount of earnings of the members of a cooperative and other workers is not limited.

The length and schedule of the working day in a cooperative, procedure for granting days off and leaves, including supplemental, as well as other conditions of work are determined by the cooperative itself.

The creation of cooperatives does not signify a return to private enterprise activity. Therefore, the use of hired labor in cooperatives shall be definitely limited. Thus, in cooperatives in spheres of production and services, local soviets have the right to define the ratio of the number of persons brought in to work in the cooperative by labor contract to the number of members of the cooperative. This ratio is established taking into account social need and the type of activity of the cooperative.

It is still too early to sum up the effectiveness of the new Law. However, due to the Law, already today thousands of new cooperatives have begun to operate in the country, and each day their number continues to multiply.

LEGAL STATUS OF FOREIGNERS IN THE USSR IN THE SPHERE OF FOREIGN ECONOMIC ACTIVITIES

By
Yu. P. Tsvetkov
Chief, Division of Law in Capitalist and Developed Countries
Main Treaty and Law Division
USSR Ministry of Foreign Economic Relations

The USSR Law of 24 June 1981, "On the Legal Status of Foreigners in the USSR" lays down the general principle that foreign citizens in the USSR enjoy basically the same rights and freedoms and perform the same duties as USSR citizens, unless otherwise provided in Soviet legislation. Exemptions concern voting rights, military service and a ban on engaging in specific labor activities.

The same principle is set forth in other enactments of the USSR. Thus, the "Fundamental Civil Legislation of the USSR and the Union Republics" (Article 122) reads that "foreign citizens in the USSR have civil legal capacity equal to Soviet citizens".

National treatment for foreigners with respect to civil legal capacity does not depend on a foreigner's place of residence in the USSR. Exemptions from national treatment are established by a number of laws. In particular, according to the legislation concerning conservation of fish resources and control of fishing in the USSR waters, foreign citizens and juridical persons in foreign states are prohibited from engaging in commercial fisheries and water-inhabiting plants-fishing in the USSR waters, except in cases stipulated by agreements concluded between the USSR and foreign countries.

The national treatment principle secured in Article 122 of the Fundamentals of Legislation is concertized in the copyright provision of Article 97 of the Fundamentals of Legislation. Under Article 97, the copyright to a work first published in the USSR (or not published but existing in the USSR) in any objective form is vested in the author or his successors irrespective of their citizenship.

Article 124 of the Fundamentals of Legislation establishes that foreign enterprises and organizations can, without any special permission, perform foreign trade transactions in the USSR, settlements allied to such transactions, insurance, and other operations with Soviet organizations which are authorized to perform such transactions. This applies to any foreign enterprise or organization be it a juridical person or not.

The civil legal capacity of foreign enterprises and organizations to transact business in the above-mentioned sphere is established in the legislation of the country where such enterprises and organizations are founded.

The civil competence of a foreign citizen as a general rule is established according to the legislation of the country of which he is a citizen. However, civil competence of foreign citizens with respect to transactions performed in the USSR, and obligations ensuring as a result of damage incurred in the USSR, is established according to Soviet Legislation (Article 123 of the Fundamentals of Legislation). It should also be noted that foreign law is not applied if it contradicts the principles of the Soviet system (for instance, restriction of legal capacity and competence on the basis of sex or race). In addition, Soviet civil legislation applies the principle of the primacy of international treaties (to which the USSR is a party) over domestic legislation, i.e. if the international treaty lays down rules other than those contained in Soviet civil legislation, the international treaty provisions will be authoritative.

The Decree of the Presidium of the Supreme Soviet of the USSR of 12 May 1978, "On Income Tax on Foreign Juridical and Natural Persons" establishes a 40% tax on income of foreign juridical persons where the income is gained from economic activities in the USSR. In this case, activities means both activities carried out directly by the firm in the USSR or through its representative offices.

National treatment on the basis of reciprocity is applied with respect to income of foreign natural persons. However, according to Clause 7 of the Decree, the amounts gained by foreign juridical persons from foreign trade transactions with Soviet organizations (i.e. American export), as well as the salaries paid to the natural persons by the foreign organizations which sent them to the USSR, are exempt from income tax on the basis of reciprocity. And, of course, it is necessary to take into account the provisions of the "Convention between the USSR and the USA of 20 June 1979 Concerning Taxation" which also secures a number of tax privileges (for instance, exemption from tax on income from purchase of goods, i.e. American import).

Questions relating to setting up representative offices of foreign firms, banks and organizations as well as their activities are regulated by the Special Regulations approved by the Government's decree of 23 May, 1977, No. 427. To set up a representative office, it is necessary to obtain permission from a ministry or department responsible for the sphere of cooperation a foreign firm is operating. Thus, for instance, commercial firms obtain permission from the Ministry for Foreign Economic Relations of the USSR, tourism firms - from the State Committee of the USSR for Foreign Tourism attached to the Council of Ministers of the USSR, banks - from the State Bank of the USSR and so on.

Permissions to set up representative offices are issued, in the main, to foreign firms which have stable business contacts with Soviet organizations, provided such firms have good reputations as partners. Permissions can be issued to foreign firms which have appreciable turnover with Soviet or organizations or which have concluded large commercial transactions or agreements on scientific and technical cooperation important for the USSR. In the case of an agreement on co-production with Soviet enterprises, the scale of such cooperation is not essential to obtain permission for setting up a representative office, but rather, the specifics of such form of cooperation. Permission may also be issued on the basis of international treaties of the USSR. The Regulations concerning the procedure of setting up and operating offices representing firms, banks and organizations in the USSR specify the purposes for which such offices may be set up. The purpose of setting up representative offices should be, above all, to perform dealings and other transactions; to assist Soviet organizations in promoting the export of Soviet goods; to assist Soviet organizations in the import of modern machinery and equipment, their maintenance and servicing; as well to assist in implementing agreements on cooperation in the sphere of trade, economy, finance, science and technology, transport, tourism and other spheres; and wider exchange of economic, commercial, scientific and technical information.

Permission to set up representative offices are issued for a definite term. The term is fixed depending upon the purposes for which the representative office is set up, but as a rule, it should not exceed two years. Nonetheless, the term of permission might be extended given sufficient grounds.

To set up a representative office, a foreign firm submits an application to a ministry or department concerned. This application indicates:

— purpose of setting up a representative office of the foreign firm;

— name of the foreign firm, time of its establishment and its country of origin;

— subject-matter of the foreign firm's activities, and the management bodies and persons representing the firm under its Charter (constituent instruments);

— date and place of approval or registration of the Charter (constituent instruments) on which bases the foreign firm is operating;

— information on business ties with Soviet institutions and signed agreements or dealings with indication of the subject matter, amount and validity of the agreement or transaction which implementation the representative office should promote, as well as prospects for cooperative development.

The documents authenticating the information on the legal status of the firm (Charter, statements from the trade and bank registers), indicated in the application should be attached to the application. Such documents with their Russian translation are presented as copies certified by a notary and the USSR Consulate in the country concerned.

In examining the foreign firm's application to set up a representative office, a Soviet ministry can demand other documents concerning the firms activities, for instance, documents on the authorized capital, the bank who services it employs, etc. To hold negotiations with the Soviet ministry, a representative of the firm should have the proper power of attorney.

In granting permission to set up a representative office of the foreign firm, the Soviet Ministry indicates the purpose, conditions and term of its operation, and the quota of would-be employees of the representative office from among foreign citizens. The term of operation indicated in the application begins from the date when permission was issued. Permission becomes invalid if the foreign firm fails to use it within six months. Provision of offices and living accommodations telephone and telex communication, other consumer services, as well as employment of personnel from among Soviet citizens go through the Diplomatic Corps Service Bureau.

Representative offices operate under USSR legislation. The office acts in the name of and on behalf of the firm it represents. The head of the representative office should have a properly executed power of attorney issued by the firm. The operation of the representative office is controlled by the ministry (department) which issued permission for its set up. Control is effected by receiving regular information from the representative office concerning its activities and the composition employees. The ministry concerned can decide to close the representative office of the foreign firm in the USSR in the event it breaks the conditions on which base permission was issued.

It should be noted that the Regulations concerning set up and operation of representative offices contain a number of obsolete features which do not take into account the recent changes in the system of foreign economic relations management in the USSR. The current application of the regulations features certain flexibility.

NEW ECONOMIC MECHANISMS IN THE USSR

By
V. A. Kozlov
Chief of Legal Department
USSR Gosplan

Acceleration of the country's socio-economic development is closely linked to radical economic reform - a basic reorganization of the economy and its democratization. During this restructuring we intend to create a more favorable means to increase the efficiency of enterprises by strengthening the rights and responsibilities of labor collectives in uninterrupted output. The fundamental legal references in this orientation are the Law on State Enterprises, the Law on Cooperatives, and government directives restructuring economic controls.

The new economy is first reflected in the broadened orientation of the enterprise, the basic link in the peoples economy. The legal status of the enterprise has been changed by a legal instrument of the highest order, by law, so that it more appropriately reflects its position in a contemporary society, giving it the tools and mechanisms required for independent operation. Enterprises have been given new powers, and their former powers have been reorganized. There has been a more appropriate coordination of freedom and responsibility in the form of complete autonomy. This has resulted in a "balance" between wider powers and their proper utilization in the interests of the government and the collective and in detrimental repercussions when this "balance" is threatened. Independent decision-making processes promote a greater sense of responsibility and commitment in this sector to produce profits and operational independence. A law was introduced that would protect these powers and enforce their observation by all government agencies.

Initial legislation placed accountability at the level of the ministries and other agencies; the law stipulates that losses suffered by the enterprise as the result of following the directives of a specific agency are to be the responsibility of the latter.

Changes have also taken place in the legal status of central controlling agencies. Economic standards have become the key factor in central planning.

The changeover of enterprises and combines to complete autonomy must play a leading role in strengthening production and resolving a number of social problems. The economic essence of complete autonomy is self-sufficiency and reinvestment, i.e. payment of all production and labor costs from one source—the income from production.

Complete autonomy will place the productive collective in a position where it will provide maximum support to a streamlined, rational, and efficient economy. The legal status of the owner will permit a discretionary use of the materials, semi-finished products, equipment and resources to determine the production method and technology and the classes and types of finished products, and to use the income for its own interests.

In order for the enterprise to be a true leader, generating income yet keeping expenses down, unprofitable and unfavorable agreements must be terminated, contractors must be freely selected, contracts must be drafted by mutual agreement, and unfair partners must be removed. In other words, the enterprise must be legally independent.

The next step in the process toward autonomy poses an interesting question: how competent will enterprises be in handling the income from operations. Once the expenses have been paid, the remaining income is at the disposal of the enterprise, which can use it as it sees best: to upgrade and expand production; for wages; for benefits; or in countless other ways. These are all incentives for increasing profit margins, production and other business activity.

Legal provisions govern the individual elements of complete autonomy and determine the property rights of the autonomous enterprise, how self-sufficiency and self-financing is attained, how to enter the marketplace, how to assume full responsibility for obligations.

An actual test of the new economic mechanisms began in 1987 when enterprises and combines of several ministries changed over to complete financial and directional autonomy. Then in 1988, the scale of conversions to complete autonomy significantly increased. We are now at a point where more than 60% of production by enterprises and combines are operating under the new system. This conversion has been accompanied by a new system of scientific planning, research and development firms to support the integration of science and production technology based on uniform economic conditions.

As of 1989, all branches of production will be converted to complete financial and managerial autonomy. New mechanisms for converting non-producing areas and territories—republics, kraijs, provinces, and the like—are projected between 1989 and 1991. Along with reforms to price structure, there are other measures, among them the restructure of material and technological provisions. This concludes only the first phase of economic reform.

Conversion to the new economic system produced immediate results in improved delivery schedules. The efficiency of the new economy has resulted in increased productivity as well. There is considerably greater interest in stimulating productivity on the part of the enterprises, and they have begun to retool and restructure production, as well as increase production levels. Greater attention is being focused on social issues, although no basic changes to operations have yet taken place. In order for the enterprises to take full advantage of their new powers, it is essential that new and democratic managerial orientations be implemented. Work must be done in this direction. The passive behaviors which characterized the old system will have negative repercussions on the new one.

Two forms of autonomy for state enterprises (combines) are envisioned in the new law: based on a standard distribution of profits, and based on the standard distribution from earnings minus cost of materials. Most of the organizations operating under the new system of full autonomy have opted for the first form, in which wages are not determined by the use and retention of resources. The second form is clearly advantageous, however, because it promotes maximal use of resources, operational self-sufficiency, progressive organizational schemes, and more closely connects labor and output. The human factor plays a key role in the second form, and once this element has been given the proper motivation it becomes primary in the area of leasing agreements.

Lease agreements as a necessary aspect of enterprise operations will further intensify self-sufficiency, self-financing, and self-management. Lease agreements are being established between lessors, the ministries, departments, executive committees of the Council of Deputies and the tenants, factories, collectives, cooperatives and individuals.

The leased property remains property of the State, but it is under the complete economic control of the tenant during the course of the lease and the owner may not interfere with the property during this time. The lessor has first rights over the goods produced on the leased premises except for that produced over and beyond the terms of the contract. The tenant has the right to improve and expand the property in place of rent and credits. The agreement leasing the basic resources and operating assets governs all aspects of the tenant's economic operations. As stipulated in the contract, the tenant pays rent and income taxes.

Lease agreements can be established within a factory. In these cases they are governed by a contract between the administration and the labor collectives of the corporations, districts, shifts or teams, as well as with cooperatives and private citizens.

State resources are maintained together with cooperative property. Lease agreements maintain genuine economic independence and accountability of the labor collective and individual workers by directly linking income with productivity. However, lease arrangements are not being diffused in industry because basic elements are still lacking, such as rates, terms and wages. These matters need to find resolution in legislation.

Many critically important matters could be resolved through cooperative activity. The USSR law on cooperative activities provides that factory cooperatives (organizations) and state factories (combines) are the basic links in the economic chain. More progressive trends in the development of cooperatives are the production of consumer goods and services. We will soon need to create consumer cooperatives and organize work along the lines of associations and cooperative combines. We are also faced with establishing taxation policies so that these revenues will be used for development and not simply to increase wages.

The implementation and development of enterprise autonomy is most closely related to the restructuring of centralized planning. The influence of a centralized plan on economic development must be accomplished through a two pronged approach. First, centralized government resources must be used in the direct implementation of social programs. Important phases in social, scientific and technological development and structural, regional and external policies must be adopted by the government. Second the factories and organizations must be encouraged to use economic mechanisms such as quotas, government contracts, established standards and limits.

In many cases, however, ministries using government contracts are forcing factories to produce without any basis in consumer demand, but simply to increase output. A new approach to product determination and delivery has been established and introduced in amended legislation. The role of government contracts in the overall volume of production has now been defined. An essential part of a factory's production is now being determined by the working collective based on contracts. State contracts are awarded on a competitive basis.

A restructure of the supply system of material and equipment is a major problem in radical economic reform. The inability to freely trade in many materials and finished products has very adverse repercussions on the introduction of new economic mechanisms. Measures are being taken in this direction to accelerate conversion to wholesale trading by the units of production. Development is planned in three areas: unrestricted and direct trade in products; a trade network of ministries and organizations; and a state agency, GOSSNAB USSR. It is projected that conversion to wholesale trading might be accomplished in 4 to 5 years.

Under a wholesale trade system, consumers obtain goods directly from factories or with the help of the territorial material and equipment supply agency. This should promote the establishment of strong economic ties between factories. Consumers have the right to obtain goods directly from the territorial agency which, in turn, makes its purchases at the factories and carries the responsibility for non performance of its contractual obligations in established legislative procedure. In this manner, the centralized distribution of goods within established limits will be obtained in production areas of economic importance. The range of production and the wholesale trade measure must be dramatically expanded.

A decisive presupposition to the introduction of wholesale trade by the unit of production is that certain material resources be made available. The restructure of our productive resources is an important stage in the implementation of the new economic mechanisms. Without it we cannot hope to resolve long or short term problems, such as equilibrated production or more efficient production, nor can we hope to achieve a more participatory control of the economy, management, trade or monetary relations, or to overcome our drawbacks and imbalances.

At present, we have completed a uniform and interrelated pricing system and the qualitative and quantitative parameters of price reviews have been established. There have been extensive reviews of industrial and other sector prices and tariffs. Fuel and energy prices have been programmed and confirmed. Prices for raw materials, parts, and finished products are near completion. New prices in the construction industry will be introduced after 1991. It will then be time to reform retail prices. The revision of industrial wholesale prices and the tariffs on transportation and communications are now under discussion and are scheduled to enter into effect on 1 January 1990.

The raising of contract prices is in the best interest of consumers but should be resolved in legislation. Price structure reforms will not improve the economy unless financial issues are resolved at the same time, bringing order to the credit system, to banking operations and to the budget. All are related to a program to strengthen the economy. Economic standards, financial regulations and taxes are key issues in improving the financial system.

Income tax reform, which proposes to raise the minimum untaxable income and to introduce progressive taxation levels is connected to the diffusion of contract, lease and cooperative agreements and to a greater distribution of different income levels.

Special attention should be given to a revitalization of the economy and stimulating monetary circulation through the restructure of banking operations toward autonomy and the establishment of a banking network—branches, regional, cooperative, and the like. Government decisions must take these new credit and financial mechanisms into account.

Stock brokerage firms will improve the financial situation by stimulating the general population towards factory expansion and development. The details related to the trade in stocks and bonds have already been worked out.

The conversion to autonomous management leads to questions regarding the relationship of enterprises and regional economic agencies and territorial financial and budget planning. The reorganization of the ministries and their new status demands that additional measures be taken with respect to the research and development combines. This will promote new economic entities that are more closely interconnected and which, in the future, will provide new opportunities for integration, more harmonious leadership and groundbreaking scientific and technological progress.

The conversion to autonomy creates the foundations for the independence of local Councils in the region and its administrative structures and organizations. A reform of the policies and their liberalization entails a new orientation of the labor system. Among the first measures on the provincial, city, and regional level must be a clarification of the nature and hierarchy of the union and republic enterprises and organizations located in a region, and mainly of the enterprises with operations geared toward meeting local needs and providing consumer goods and services.

In our country, the process of forming new models for a socialist economy, such as in the case of systematically organized production of a commodity, is forging ahead at full force. Its primary goal is to improve the welfare of the people and the formulation of a Soviet lifestyle that meets their needs. The basic objectives are: first, to facilitate interaction at all levels; second, to implement qualitative enhancements directed at operational independence, such as lease arrangements; third, to stimulate state and cooperative enterprises toward complete independence as socialist units of production.

SOURCES AND PROCEDURE FOR FINANCING ENTERPRISES IN THE USSR

By
A. S. Antonov
Chairman of the Board
"Inaudit" Joint Stock Company

Dear ladies and gentlemen, comrades!

In my talk I would like to discuss briefly the procedure for financing Soviet enterprises, or rather, self-financing, since, in accordance with the USSR Law on the State Enterprise (Association), approved at the 7th USSR Supreme Soviet session, 11th Convocation, on 30 June 1987, an enterprise operates on the basis of full economic accountability and self-financing.

This law, in accordance with the USSR Constitution, defines the economic and legal bases of the economic activity of socialist state enterprises (associations), and defines the relationship between enterprises (associations) and organis of state power and control.

The activity of an enterprise is structured on the basis of an economic and social development plan. Its production and social activity and wages come from funds earned by the labor collective. The enterprise reimburses its material costs from earnings obtained from the sale of its products and services. Profit or income is the index of its economic activity. The enterprise must use some of the profit (income) to fulfill obligations to the financial organs, banks and higher organ. The rest is placed under its full disposal and forms, along with wage funds, the economic accountability income of the collective.

The economic accountability income of the collective is the source of the production and social development of the enterprise and of wages, is at the disposal of the enterprise, is used independently, and is not subject to confiscation.

The enterprise, with the permission of the higher organ, can use the following forms of economic accountability:

> *Based on normative distribution of profit.* Accounts are settled with the budget and higher organ, and interest on credit is paid out of profit. Residual profit, formed after these payments are made, goes to the disposal of the labor collective, and the following funds are formed from surplus profit, according to norms: development of production, science and technology; social development, material incentive, or other funds with similar purposes.
>
> *Based on normative distribution of income obtained after reimbursement of material expenses from earnings.* Accounts are settled with the budget and higher organ, and interest on credit is paid out of income, after which the economic accountability income of the collective is formed. A unified wage fund is formed from the remainder of the economic accountability income of the collective, and the following funds are formed: development of production, science and technology; social development, or other funds with similar purposes, determined according to the norms for economic accountability income.

A financial reserve, and a currency withholdings fund may be formed in the enterprise.

Material and technical supply of the enterprise is of great importance for ensuring the normal flow of production. In the wholesale trade system, the enterprise acquires material resources without limits (funds), in accordance with its orders, based on contracts concluded with material and technical supply enterprises and other organs, or with product manufacturers. Separate material resources, pursuant to limits, are aloted to the enterprise on a centralized basis. The enterprise determines the assortment and times of delivery of these resources according to contracts with suppliers.

The price setting procedure for the products it sells has a direct effect on the financing of the enterprise and the level of its profits. The laws and obligations in the area of price formation are carried out by the enterprise in accordance with the main principles of state price control and regulation.

The enterprise sells its products and services at centrally established prices as well as by agreement with the consumer or independently. Enterprises must be guided by centrally established prices confirmed by ministries and departments. At the same time, an enterprise may, in agreement with a purchaser, determine increases to the centrally established wholesale prices, for fulfilling additional requirements that change consumption characteristics and product assortment. In order to expand independence in economic activity, account for the individual requests of consumers more fully, and stimulate output of high-quality products, an enterprise has the right to apply prices by agreement with a consumer (agreed prices), for technical manufactured products, produced according to one-time and individual orders; new or newly developed products, and new non-food consumer items, as well as certain types of food items, sold by agreement with trading organizations, for up to two years according to the established listing; end products of scientific research and drawing and design organizations; agricultural products purchased by sovkhozes [state farms] and other state agricultural enterprises; products purchased and sold by cooperative organizations; and other types of products and services provided for by law.

The enterprise conducts its activity in accordance with five-year and annual financial plans, which it independetly develops and approves, using control figures, state orders, long-term economic norms and limits, as well as direct orders of consumer material and technical supply organs for its products and services.

In this the enterprise proceeds from the fact that:

> Control figures are not directive in nature, and they include a product or services production index calculated in value terms for conclusion of agreements; profit (income); currency earnings; the most important general indices of scientific and technical progress; and indices for development of the social sphere;
>
> State orders guarantee satisfaction of social needs, and are given to an enterprise for introduction of production capacities and social sphere facilities, at the expense of state centralized capital investments, as well as for the delivery of certain types of products, needed mostly for solving statewide and social tasks, accomplishing scientific and technical programs, ensuring the defense capability and economic independence of the country, and supplying agricultural products;
>
> Long-term economic norms are stable for an entire five-year plan. They define relationships with the budget, formation of the wage fund, the enterprise, and are set taking into account branch regional particularities;
>
> Limits establish the maximum amount of state centralized capital investments for development of interbranch industries, new construction, and solving especially important tasks, in accordance with the listing of enterprises and facilities included in the state plan; quantities of building and installation and contractual projects; and centrally distributed material resources for meeting the needs of production and construction.

Earnings obtained from the sale of products and services finance material (and according to the first economic accountability model, also labor) costs of the enterprise; the economic accountability income of the collective serves as the primary source of financing its production and social development. The procedure by which it is determined depends, as was stated, on the selection of one of two economic accountability models. But in both cases, payments to the state budget, banks and higher organ are produced first.

The financial relations of the enterprise with the state budget are based on long-term economic norms. The enterprise makes payment to the budget for resources that are at its disposal; part of its profit (income); as well as other payments and deductions provided for by law, including into the local budget, according to established norms.

Payment of production funds is made according to the established norm. Payment for labor resources reimburses the state for training of the work force, and for social and cultural, and communal living services provbided to the worker and their family members. A differentiated rent, arising due to differences in the natural productivity of natural resources is charged through a payment for these resources.

Thus, income (profit) remaining in the enterprise after reimbursement of material (and labor) costs goes to financing costs of accounts with the budget, banks and the higher organ. The remaining funds, representing the economic accountability income of the collective, finance the costs of creating the production, science and technology development fund; social development fund; material incentive fund, and other funds with similar purposes.

The enterprise uses the production, science and technology development fund to finance scientific research and experimental design operations; modernize and expand fixed capital on a modern technical foundation; increase the enterprise's own working capital; as well as for other production development objectives.

The labor collective uses the social development fund for housing constriction; every kind of strengthening of the material and technical base of the social and cultural sphere; maintenance of its facilities; carrying out health and mass cultural measures; and satisfying other social needs. The enterprise, with the agreement of the labor collective, has the authority to put some of the monies of the material incentive fund into the social development fund, and can use some of the production, science and technology development fund monies for housing constriction, within the limits established by law.

The material incentive fund is spent for bonuses, rewards, and other forms of incentives for labor, and for material assistance.

Instead of the wage fund and material incentive fund, an enterprise may form a labor payment fund, which serves as the sole source of all payment to workers for the results of their labor.

The enterprise also has, among its own sources of financing, amortization deductions (the amortization fund), which go into the production, science and technology development fund or another fund of similar purpose, according to the established norm, at the expense of the production cost of the products or service; a repair fund, formed according to norms, at the expense of the production cost of the product, the funds of which are spent for all types of repair of fixed capital; fixed liabilities; normal carry-over debt for wages to workers and employees and set contributions for social insurance; reserves to cover forthcoming expenditures; monies of creditors obtained as payment for partially ready products; as well as certain other sources.

Besides the funds of the enterprise, which are the main sources of financing the outlays of the enterprise, funds of banks, and in some cases those of the higher organ and state budget, are also used for these purposes.

Bank credit is used by the enterprise for production and social goals, and under conditions of strict observance of credit principles: security; clear-cut purpose; and the time period, repayability and interest payment of credits extended.

Short-term credit is given to an enterprise by a bank for purposes of ongoing activity, according to consolidated credit objectives. Long-term credit is granted for production and social development, with the credit subsequently repaid from monies in the production, science and technology fund and the social development fund (and other similar funds).

Allocations from the budget are associated, as a rule with financing the costs of enterprises for introduction of production capacities and social sphere facilities, at the expense of state centralized capital investments. Monies of the higher organ are for additional financing of economic incentive funds.

In conclusion, I would like to say a few words about the foreign economic activity of an enterprise, which is accomplished, as a rule, based on currency self-support and self-financing. Its result is an organic part of the results of the economic activity of the enterprise, and directly influences the formation of economic incentive funds and currency deductions.

In accomplishing export-import operations, an enterprise:

coordinates with foreign partners on the basis of economic contracts;

creates a currency deductions fund, formed according to stable, long-term norms, from monies received from the sale of finished products or services for export, as well as from all currency receipts from the operation, according to co-operative deliveries and sale of licenses;

may obtain bank credit in foreign currency for creating and developing export production, with credit paid off from the currency earnings obtained from export of the products.

In accordance with a December 1988 USSR Council of Ministers resolution, beginning 1 April 1989 all enterprises, associations, production coopratives and other organizations whose products (works, services) are competitive on the foreign market, have the authority to carry out direct export-import operations.

Thank you.

REGULATION OF CIVIL AND LEGAL RELATIONS BETWEEN SOVIET AND FOREIGN-ECONOMIC ORGANIZATIONS IN CARRYING OUT EXPORT-IMPORT OPERATIONS

By
M. G. Rozenberg
Professor, Legal Discipline Department
All-Union Academy of Foreign Trade

1. Regulation of civil and legal relations between Soviet enterprises and Soviet foreign trade organizations (FTOs) engaged in export-import operations was established by the Council of Ministers of the USSR in 1988 (decision of the Council of Ministers of the USSR of July 25, 1988 No. 888 published in the Collected decisions of the Government of the Union of Soviet Socialist Republics, section 1, 1988, No. 24-25, Article 70). This decision approves the "Main Conditions of Regulation of Contractual Relations in Carrying out Export-Import Operations" (hereinafter referred to as "the Main Conditions"). In the context of the measures carried out in the Soviet Union on the radical restructuring of economic relations, the legislature fixes only the basic principles governing relations between Soviet enterprises and foreign-economic organizations. When entering into a civil and legal contract, the parties themselves define the contents of their rights and obligations for a considerable number of questions as well as the trends of shaping economic relations between them in the future.

The Main Conditions regulate contractual relations between the State, cooperatives and other Soviet public enterprises supplying goods for export or importing goods, and the FTO irrespective of what ministry or departmental system either is a part of.

2. Effective regulation proceeds from the assumption that while carrying out export-import operations FTOs always act as intermediaries in the interests of Soviet enterprises and other organizations—either producers of goods for export or importers.

3. Contractual relations between the enterprise and the FTO may emerge in different ways depending upon the basis upon which the contract was concluded. They are established taking into consideration the target figures brought to the notice of the parties and proceeding from state orders (centralized currency allocations), other indicators of the plan of economic and social development, as well as on the basis of separate decisions of the competent bodies, and on the initiative of the parties.[1]

If an enterprise is required to export under a State order, the State has placed a high priority on delivery of the products by the enterprise in order to fulfill State export obligations. In this situation, if the parties fail to agree upon certain conditions of such a contract, the legislature establishes the procedure of settling pre-contract disputes at the state arbitration bodies.

In contracts for import, the following factors are considered: a) the availability to the enterprise of its own currency funds; b) credits in foreign currency on deposit in the enterprise's bank account; c) currency allocations apportioned by the state in a centralized way.

When a state-apportioned centralized currency allocation is the basis for signing a contract to import goods, the procedure applied is similar to that applied in cases when contracts are signed based on a state order to export (discussed above).

Contracts can be signed for a period of 5 years, for a year or for any other period.

4. Enterprises are legally required to ensure the delivery of goods for export. The completed articles, raw materials and materials required for delivery of goods for export, are supplied under the same procedure.

---

[1] Questions of planning foreign-economic operations are regulated by the decision of the CPSU Central Committee and the Council of Ministers of the USSR of July 17, 1987, No. 816 "On Restructuring the Planning and Enhancing the Role of the USSR State Planning Committee under the New Economic Conditions: (published in the Collected decisions of the Government of the Union of Soviet Socialist Republics section 1, 1987, No. 33, article 115), as well as the tentative Provision on the Procedure of Formation of the State Orders for 1989 and 1990, approved by the decision of the Council of Ministers of the USSR of July 25, 1988, No. 889 (published in the Collected decisions of the Government of the Union of Soviet Socialist Republics, section 1, 1988, No. 26, article 71).

5. The Main Conditions are the basic source for legal regulation of the relations between enterprises and FTOs in the implementation of export-import operations. At the same time, they provide that for all the questions not regulated therein, the parties shall be guided by the relevant applied norms of the Statute on Delivery of Goods of Production and Technical Designation and the Statute on Delivery of Consumer Goods. The said Statutes are applied by the same Decision of the Council of Ministers of the USSR as the Main Conditions, and regulate interstate deliveries not connected with export and import operations. In addition, a number of special questions are governed by certain inter-departmental and departmental Standard Acts. These Acts are published by the ministries and departments of the USSR.

6. The Main Conditions are applied not only to the delivery of goods but also to the export and import of services and the transfer of scientific-technical results.

7. The Main Conditions provide that the following forms of contracts may be signed between an enterprise and an FTO.

Those enterprises empowered with the right to directly perform export-import operations can sign an agency contract with an FTO. In an agency contract, the enterprise, as the principal, authorizes the FTO (the agent) to close a deal with a foreign-contracting party on behalf of and at the expense of the enterprise. This contract is regulated by the norms of the general civil legislature and in particular, the Civil Codes of the Union Republics. The Civil Code of the RSFSR dedicates Chapter 35 (Articles 396-403) to this type of contract. An agency contract between an enterprise and an FTO is for consideration. All the rights and obligations under the contract signed by the FTO with a foreign contracting party belong to the enterprise (the principal).

An enterprise can also sign contracts with an FTO for the FTO's consultation and information services as well as for studying the possibility of purchasing goods on the external market. Such contracts are also for consideration.

In case of the export of goods, according to the general rule, a contract of commission agency is for remuneration. Under such a contract, the FTO undertakes the obligation, on instructions from the enterprise, to close on behalf of the enterprise, one or several deals. The relations of the parties to a contract of commission agency are regulated by the norms of general civil legislation and, in particular, the Civil Codes of the Union Republics. Chapter 36 of the Civil Code of the RSFSR is dedicated to this type of contract (Articles 404-421). Subject to agreement by the parties, a delivery contract can be also signed between them. Under the Main Conditions, the relations between the parties to a delivery contract on questions pertaining to the right of property, passing the risk of loss, the moment of delivery, the quantity and quality of the goods, and the responsibility for default on or inadequate discharge of the obligations under the contract are regulated under a different procedure than in case of a contract of commission agency.

When the goods to be exported are ones for which the enterprise cannot receive full hard currency credit in its own bank account for the full value of the goods as sold, the relations of the parties are finalized by a delivery contract. However, the parties may also agree to use a contract of commission agency.

A commission contract is used for the importation of goods. The Main Conditions allow the FTO to warrant the proper discharge by a foreign supplier of any obligations (standing del credere). By force of the general norms of the Republican civil legislature, (Article 415 of the Civil Code of the RSFSR in particular) special remuneration must be paid to the FTO for undertaking these increased obligations.

8. The Main Conditions allow representatives of the enterprise to participate in the negotiation and preparation of the contract as well as to negotiate the technical specifications of goods and other conditions where special knowledge is required. The FTO is entrusted with the obligation to provide the enterprise with a copy of the contract it signs with the foreign contracting party. If, while checking such copy, the enterprise discovers a discrepancy between the contract and the terms and conditions of the internal agreement, or any inaccuracies whatsoever it must so inform the FTO. The FTO must then take all the necessary actions to eliminate any such discrepancies or inaccuracies. In cases when a contract cannot be reached on the same terms and conditions provided for in the internal agreement, the FTO must so inform the enterprise and advise the enterprise of its proposals or amendments, or cancel the internal agreement. If the enterprise fails to inform the FTO of its conclusion, the FTO is within its rights to refuse to execute the agreement.

9. The Main Conditions provide specific requirements for the contents of the internal agreements signed by the enterprises and FTOs. The enterprise may request that the internal agreement specify the terms and conditions which the FTO must take into account when entering into contracts with foreign contracting parties.

When entering into agreements, the parties shall take into consideration the demands of the external market as well as the provisions of international treaties concluded by the Soviet Union, and in particular the General Conditions of Delivery in force in the relations between the USSR and the country with whose organization a contract will be signed.

10. In a commission contract, a party's responsibility for default on the obligations is provided for both when the default is the consequence of causes within the control of the defaulting party and in cases when the damage is caused by the actions or inactivity of the foreign partner under the contract. If the damage is caused by the wrongful actions of the FTO or the enterprise, that party bears responsibility to the other party in full scope of the damage caused. If a foreign contracting party or other organization have to bear responsibility for the damage, the FTO must take the actions necessary to refund the damages suffered and hand over the reparation to the enterprise in such currency and within such sums as the FTO has received from the foreign contracting party.

If, due to the fault of the FTO, the possibility of receiving the corresponding sums has been lost, the FTO shall bear responsibility in the currency and within such sums as could have been received from the foreign contracting party, the ship owner insurance or other organizations.

In case of the FTO's undertaking in the agreement on import of goods a warranty for proper discharge by the foreign supplier of any obligations, it shall bear direct property responsibility to the Soviet organization (the client) within such scope as such responsibility would have been borne by the foreign supplier.

11. The Main Conditions contain a number of other provisions governing the relations of the parties in the execution of the export-import operations. For example, there are provisions as to the moment of discharge of the obligations; on the behavior of the parties in case the goods cannot be sold on the external market; on the enterprise's guarantee obligations for delivery of goods for export; on the demands of conformity of the purchased equipment with the standard acts in force in the USSR; on environmental control; labor protection and safety engineering.

SOME QUESTIONS ON THE RESOLUTION OF DISPUTES IN COMMERCIAL ARBITRATION IN LIGHT OF THE NEW SOVIET LEGISLATION

By
S. N. Lebedev
Head of the Department of International Private and Civil Law of the Institute of International Relations

President of the Maritime Arbitrations Commission at the USSR Chamber of Commerce and Industry

Essentially during the entire history of Soviet foreign trade, the Court of Arbitration has been the most widespread body, designated and used for the resolution of commercial disputes. The almost 60-year existence of the two specialized permanent arbitration institutions - the Court of Arbitration (until 1987 - The Foreign Trade Arbitration Commission) and The Maritime Arbitration Commission at the USSR Chamber of Commerce and Industry, has contributed to the use of international commercial arbitration in the resolution of claims between Soviet trade, transportation and other foreign economic organizations and their contractors from socialist, capitalist and developing countries.

The organization, scope of activity and practice of the Court of Arbitration and the Maritime Arbitration Commission (which on some occasions has conducted hearings involving American corporations) have been reported in sufficient detail in many reviews, some of which are in English.[1] The internal legislation and the international treaties of the USSR are oriented towards the consolidation of legal policies of arbitration, including, in particular, the possibilities of its wide application by Soviet organizations both in the USSR and abroad, improvement of arbitration procedure, and ensuring the enforceability of its decisions.

Along with the participation of the USSR in multinational conventions, such as the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards, the 1961 European Convention on International Commercial Arbitration and the 1972 Moscow Convention on Arbitration, developed under the aegis of the CMEA, as well as in numerous bilateral trade and other agreements, containing provisions on arbitration, great attention has been given to the preparation and adoption of other types of international documents. Among these documents was the Uniform Rules for Courts of Arbitration in CMEA countries, the EEC and UNCITRAL Arbitration Rules, bilateral recommendations, including the "Optional Arbitration clause for Soviet-American Contracts" (USSR Chamber of Commerce and Industry - The American Arbitration Association), and the like.

According to the current legal viewpoint, the disputing parties, if they wish, may refer their dispute to what is typically known as "ad hoc" arbitration. One must note, by the way, that unlike the legislation of numerous other countries, including the USA, the USSR at the present time does not have a general or composite arbitration law. Because of this, "ad hoc" arbitration is determined basically by mutual agreement of the contesting parties themselves. The parties may agree, for example, to utilize the EEC or UNCITRAL Arbitration Rules, or others. It seems that on the whole, composite regulation (of international commercial arbitration) could be achieved in the USSR by drafting a law in the near future which might reflect the provisions of the relevant UNCITRAL Model Law of 1986. During a short period of time, the UNCITRAL Model Law has already been perceived as a national act in a number of countries, including the USA (the State of California).

Inasmuch as arbitration is perceived as an institution of a contractual nature, there are no obstacles to agreeing to transfer a dispute between a Soviet organization and its foreign contractor to the arbitration of other countries - both to "ad hoc" arbitration, as well as to institutional or "administrative" arbitration (including, for instance, the American Arbitration Association, or the New York Society of Maritime Arbitrators),

---

[1] S. Lebedev, V. Pozdnjakov, M. Rosenberg, "The Law of the USSR (as Applied to Civil Law and Procedure Relations)", *The Digest of Commercial World*, Oceana, New York, 1980.

S. Lebedev, "National Report", *International Handbook on Commercial Arbitration*, December, 1984.

Handbook of Foreign Trade Arbitration in Cmea Countries, Moscow, 1983.

Awards made by these bodies are enforceable in the USSR on the basis, for example, of the New York Convention of 1958.

The intent of the present report is to briefly touch upon certain issues which may have some meaning in the context of arbitration in light of the new Soviet legislation which is tied to perestroika. These issues are specifically related to foreign economic relations in the face of the widening circle of participating Soviet organizations, the development of joint ventures, and the strengthening of juridical guarantees. Even though this legislation, as a rule,[2] is not devoted to arbitration, it contains incidental, but nonetheless substantial, edicts touching on the possibilities of the use of arbitration. It is understandable, that the currently forming legal policies, as a whole, will demand much further research, especially with regard to their practical application.

The question of the legal basis for the use of arbitration is in itself a fundamental issue. In accordance with the law, one of the characteristic features of any formation recognized to be a juridical person (enterprises and institutions of state, cooperative and other public organizations), is its ability "to be the plaintiff(s) and defendant(s) in arbitration,[3] or a court of arbitration" (Article 11, the Foundations of Civil Legislation of the USSR and the Union Republics). Article 4 of the Foundations of Civil Legal Procedure of the USSR and the Union Republics contains the following edict on the Court of Arbitration: "In situations provided for in the law, civil cases can be reviewed...by courts of arbitration." The codes of civil procedure of the Union Republics stipulate (similar to Article 27 of the CCP of the RSFSR), that "in cases, provided for by the law or by international treaty, a dispute arising from civil law relations may, with the agreement of both parties, be referred to a court of arbitration, the Maritime Arbitration Commission or the Foreign Trade Arbitration Commission at the USSR Chamber of Commerce and Industry."

In the absence of a general law on arbitration, the issue of the prerequisites for the use of arbitration, was until recently, discussed mostly in the context of those special normative decrees, which directly touched upon the Foreign Trade Arbitration Commission (now the Court of Arbitration) and the Maritime Arbitration Commission. On the other hand, the main focus was given to the practice of those Soviet organizations (juridical persons), which were within a small group of departments (such as former Ministry of Foreign Trade and the State Committee for Foreign Economic Relations) and which were specially authorized to conduct various foreign economic operations.

The reform in the sphere of foreign economic relations, the transition from primarily trade exchanges to industrial and scientific-technical cooperation, and the course of development of contemporary forms of cooperation all resulted in widening the circle of Soviet organizations with the right to enter foreign markets, and the right to independently conclude foreign economic agreements. Under the reform, 22 ministries and departments, and 77 industrial and other enterprises were granted the right to participate in export/import operations. In addition, foreign trade associations at the republic level were created in 1987. The Law on the State Enterprises (Associations) of June 30, 1987 recognized that foreign economic activities should be an important part of overall activities (Article 19). These enterprises are now, as a rule, operating on the basis of currency self-capitalization and self-financing. Along with the right to establish "industrial and scientific-technical cooperation" with foreign partners, Paragraph 4, Article 19 also gave the enterprise the "right to directly conduct export/import transactions (including with the markets of capitalist and developing nations) and to create for these purposes a khozraschet (economically self-accountable) foreign trade firm."

The enterprise "is in cooperation with foreign partners on the basis of economic agreements," and is responsible for any failure on its part to fulfill the terms of the agreement, etc. (Paragraph 5, Article 19). Cooperatives (and cooperative associations), are juridical persons, and are allowed to participate in foreign economic activity. Article 28 of the Law on Cooperatives (May 28, 1988) gives the cooperative "the right to directly undertake export/import operations." Analagous directives have been included in several other normative statutes concerning individual juridical figures of Soviet law.

The more radical decision, however, particularly from the point of view of Soviet organizations' participation in foreign economic contacts, is expressed in the new December 2, 1988, Resolution of the Council of Ministers of the USSR, No. 1405, "On the Future Development of Foreign

---

[2] I will not dwell on the Decree of the Presidium of the Supreme Soviet of the USSR of December 14, 1987, because of which the Foreign Trade Arbitration Commission was renamed the Court of Arbitration and the new Statute on the Court of Arbitration was confirmed (Register the Supreme Soviet of the USSR, 1987, Article 806). The changes introduced by this Statute and also by the rules of the Court of Arbitration, confirmed by the Presidium of the USSR Chamber of Commerce and Industry on March 11, 1988 were already explained in the report of Professor V.S. Posdnyakov during the first seminar which took place in Moscow in September 1988.

[3] "Arbitration" here means State arbitration, the organs of which are, in a sense, special coutrs, empowered to exercise jurisdiction for resolving economic disputes which arise between Soviet organizations and which, with certain exceptions, are withdrawn from the jurisdiction of standard courts. To prevent any misunderstandings in future references, the above described "arbitration" will be labelled as "State arbitration", quite different from the concept of arbitration by agreement ("treteysky sud" or a court of arbitration) to which this report is devoted.

Economic Activity of State, Cooperative and other Public Enterprises, Associations and Organizations". Starting April 1, 1989, the right to directly conclude export/import agreements will be expanded to all organizations whose products (work, services) are capable of competing on the world market. Prior to this date, state enterprises, cooperatives and other public organizations needed special permission to conduct export/import operations.

Expanding the right of participation in foreign economic business, including export/import activities, to such a wide circle of organizations also increases the possibility of reaching an agreement to resolve foreign economic business disputes by arbitration. This applies only to foreign trade associations, organizations and firms whose statutes and charters contain special provisions on their ability to act both as plaintiffs and defendants in a court of arbitration,[4] but also to other Soviet organizations, whose charters do not contain such provisions.

The basis for this conclusion is the general reference to the Court of Arbitration which is contained in the above-mentioned Article 11 of the Foundations of Civil Legislation.

Thus, within the framework of the relationship between a Soviet organization and a foreign partner, neither side has the right to challenge the agreement to arbitrate in itself, since it was agreed upon by both sides. Furthermore, even if an agreement to arbitrate were challenged on the basis that the Soviet organization entered the foreign economic contract, even though it lacked authorization to participate in such operations, such a challenge would be rejected under Soviet law. The agreement to arbitrate is by its legal character an autonomous and separable agreement. The arbitrators could deal with the question of the validity of the principal contract, even if the agreement to arbitrate is included as a clause in the text of the principal contract. Consequently, the arbitrators may render a decision declaring the principle contract invalid, as one entered into by one of the sides that exceeds the limits of its authority (ultra vires).

Furthermore, it should be noted, that the admissability of an agreement between Soviet organizations and foreign partners to arbitrate pertains not only to those cases in which the dispute arose from agreed-upon relations of a foreign economic character, which up till now were the focus of this report, but also to other cases. These include cases in which the dispute arises from tortious actions or other non-contractual relations.

Besides Soviet legislation, recognition of arbitration agreements in the USSR is based upon provisions of international treaties to which the USSR is a party, e.g., the 1958 New York Convention (to which over 70 nations are the parties, including the USSR and the USA). Article II of this Convention provides for recognition of agreements to arbitrate disputes that have arisen or could have arisen between the sides (physical and juridical persons) "in connection with some specific contractual or other legal relation". Even though the Convention's principal objective is enhancing the effectiveness of arbitration in international business relations, the conditions of its application have been formulated on a wider basis. Unlike a number of countries, including the USA, the Soviet Union, in ratifying the Convention, did not make a declaration limiting its applicability only to "disputes, arising from contractual or other legal relations, which are treated by Soviet law as being of commercial nature". The absence of such a declaration signifies, in particular, that the recognition of an arbitration agreement cannot be denied by reference to the "uncommercial" character of the disputed relation.

The essential meaning, from the point of view of the conditions of the settlement of disputes, including the utilization of arbitration, is contained in the corresponding regulations under the legislation of the USSR dedicated to joint ventures, in particular those which are created on the basis of agreements between Soviet organizations and firms from capitalist and developing countries.[5] Although the disputes, which could arise in connection with the activities of joint ventures and the activities of the participating organizations and firms could be very diverse, the above legislation (Article 5 of the Decree of the Presidium of the Supreme Soviet, Article 20 of the Decree of the Council of Ministers of the USSR, No. 49) directly addresses only three concrete categories of disputes which in essence are of a civil-legal nature. These are: a) disputes between joint ventures and the Soviet State, a cooperative or other public organization; b) disputes between various joint ventures; and c) disputes among participants of a joint venture on issues related to its activities.

---

[4] Such provisions are included, for example, in the Statutes on Foreign Trade Associations of Industrial and some other Ministries (paragraph 9) and in the Model Regulation For a Foreign Trade Firm of an Industrial Association (Paragraph 14), confirmed by the Council of Ministers of the USSR on December 22, 1986, - The Collection of Decrees of the Government of the USSR, 1987, No. 5, page 24.

[5] The Decree of the Presidium of the Supreme Soviet of the USSR of January 13, 1987 "On the issues, connected with the creation on the territory of the USSR, and the activity of joint ventures, of international associations and organizations with the participation of Soviet and foreign organizations, firms and State organs." (Register of the Supreme Soviet of the USSR, 1987, No. 2, Article 35, and No. 26, Article 39.)

The Decree of the Council of Ministers of the USSR of January 13, 1987, No. 49, "On the course of creation and activity of joint ventures with the participation of Soviet organizations and firms of capitalist and developing countries." (The Collection of Decrees of the Government of the USSR, 1987, No. 9, Article 40.)

These categories of disputes, in accordance with USSR legislation are examined in the Courts of the USSR or, with the agreement of both parties, in a court of arbitration.

For other categories of disputes, for instance, between a joint venture and its foreign participant or some other foreign entity, questions on jurisdiction can be resolved, as a rule, on the basis of already-existing norms of Soviet law. On the other hand with respect to the three categories of disputes mentioned above, it appears appropriate, or even necessary to establish special regulations. Such an approach is dictated in part by the fact that joint ventures "are juridical persons of Soviet law" (Article 6, Decree No. 49). In other words, they are "national juridical persons", which are obligated to be "guided by Soviet legal norms."[6]

In that connection, for instance, disputes between joint ventures and some other Soviet organization or another joint venture, formed on the territory of the USSR, could be treated as under the jurisdiction of the State arbitrazh which settles disputes arising between Soviet enterprises. A joint venture pertains to those concrete forms of juridical persons, which are designated in the first, second and third parts of Article 11 of the Foundations of Civil Legislation. Disputes among the majority of these "persons" are traditionally under the jurisdiction of State arbitrazh. These concrete forms of juridical persons are 1) State enterprises, institutions and organizations; 2) collective farms and other cooperative or public organizations; 3) State-cooperative organizations.

From the stand point of Article 11, the joint venture, apparently, should be included among "other organizations" acknowledged as juridical persons "in cases provided by the legislation of the USSR" (Part 4, Article 11, the Foundations of Civil Legislation).

In other words, within the legal system, joint ventures, on the basis of special legislation must be classified as a special, independent form of Soviet juridical persons, in a manner similar to that adopted by a number of foreign legal systems. It stands to reason that since it is the legislature that allows the formation of joint ventures, the legislature is also entitled to regulate questions of jurisdiction over disputes in which joint ventures are involved. This includes the possibility of bringing these disputes to State arbitrazh as this is done, for instance, in relation to joint ventures, international associations and organizations of the USSR and other socialist-nation CMEA members.[7]

However, in the case of joint ventures involving firms from capitalist and developing nations, Decree No. 49 has established a different procedure. Disputes of such joint ventures with other Soviet organizations, as well as disputes amongst the participants of a joint venture (even if the disputing parties were only Soviet or only foreign participants) are under the jurisdiction of the "courts of the USSR", or in other words, people's courts.

At the same time, according to Article 20 of Decree No. 49, disputes, which are listed in the decree, may "in accordance with the legislation of the USSR" be sent by agreement of the parties to a court of arbitration. The given regulation is significant in several respects. Soviet law contains no obstacles to referring a dispute arising from relations between Soviet organizations and subjects of foreign law to arbitration. However, in the context of civil-law relations between a joint venture and a Soviet organization or another joint venture (or between two Soviet participants in a joint venture) we are dealing with disputes only between juridical persons created by Soviet law.

For disputes of this kind, (which are ordinarily under the jurisdiction of State arbitration) the possibility of transferring the cases to an arbitration court in a general manner has not been provided for in the legislation. According to Article 4 of the Foundations of Civil Procedure and Article 27 CCP of the RSFSR referring a dispute to arbitration is permissible only "in cases stipulated by the law". Thus, Article 5 of the Decree of the Presidium of the Supreme Soviet and Article 20 of the Decree of the Council of Ministers No. 49, with regard to disputes specified therein must be interpreted as the concrete normative sanctioning of the acceptability of arbitration even when the dispute is only between juridical persons created by Soviet law.

Therefore, by mutual agreement, present as well as future disputes in the USSR may be referred to arbitration for resolution. Depending on the character of a dispute, the case may be referred to the Court of Arbitration of the USSR Chamber of Commerce and Industry, "which resolves disputes arising from contractual and other civil law relations in the implementation of foreign trade and other international economic relations: (Article 1 of the statute of the Court of Arbitration), or to the Maritime Commission for Arbitration at the USSR Chamber of Commerce and Industry "which resolves disputes arising from the contractual and other civil law relations arising from merchant navigation," which include chartering of vessels, carriage of goods, etc." (Article 1 in the statute of the Maritime Arbitration Commission), or, finally, to "ad hoc" arbitration.[8]

---

[6] Sm. M. I. Braginskiy, *Joint Ventures, International Associations and Organizations on the Territory of the USSR*. Moscow, 1988, p. 89 (in Russian).

[7] Decree of the Presidium of the Supreme Soviet of the USSR, December 30, 1987 - Register of the Supreme Soviet of the USSR, 1988, No. I, Article 3.

[8] In correspondence with the new Charter of the USSR Chamber of Commerce and Industry of February 19, 1988, the Chamber "in cases provided for by the mutual agreement of the involved parties, assigns arbitrators and extends assistance in the conduction of arbitration which is formed for the examination of individual cases". - Foreign Trade, 1988, No. 8.

In discussing joint ventures in the context of arbitration, in my opinion, it is necessary to bear in mind the particular nature as well as the purpose of such formations. The preamble of Decree No. 49 states that creation and activities of joint ventures, should be motivated by the objectives "of furthering the development of economic trade and scientific-technical collaboration with capitalist and developing countries on a stable and mutually profitable basis".

Arbitration agreements, allowable under Article 5 of the Decree of the Presidium of the Supreme Soviet and Article 20 of Decree No. 49, cannot be extended to cover disputes under the exclusive jurisdiction of the Soviet Court or other governmental bodies, where such exclusive jurisdiction has been specifically established by Soviet law.[9] An example of such cases are disputes concerning the right to a building, or the release of property from arrest or land use, all of which are subject to judicial jurisdiction at the place where the property or the land is located (Article 119, CCP, RSFSR).

Another example might be some categories of disputes associated with invention activities (in particular, cases of violation of intellectual property rights of the patent holders, annulment of patent, etc.) which are under the jurisdiction of special bodies. (Article 56, Draft of the USSR Law on Invention Activity in the USSR which has been currently presented for public discussion, relegates disputes of this kind to patent courts to be established).

III

In spite of traditional practice of Soviet organizations to comply with foreign awards, one cannot exclude, of course, that there might be situations in which it would be necessary to revert to enforcing measures with regard to such awards against the debtor, be it a Soviet organization or a joint venture or even a foreign national. In the process of intensification and diversification of external economic relations, a considerable increase of the number of Soviet organizations participating in the implementation of such relations, the emergence of new and complicated forms of investment and commercial activities of foreign firms, etc., the enactment of special regulation on the procedure for enforcing awards made abroad serves to provide due legal guarantees.

The Decree of the Presidium of the Supreme Soviet of the USSR of June 21, 1988, "On the Recognition and Enforcement in the USSR of the Decisions of Foreign Courts and Arbitration",[10] is another act which is very useful from the viewpoint of the international commercial arbitration. The passing of this Decree with respect to foreign arbitration awards was based on a number of factors.

In accordance with Article 63 on the Foundations of Civil Procedure, the manner of enforcement of foreign arbitration awards is determined by a relevant international treaty of the USSR. One can conclude that in case of absence or inapplicability of a treaty such awards are not enforceable in the USSR.

At the present time, the Soviet Union participates in various multilateral and bilateral agreements that provide for enforcement of arbitration awards, among which is the New York Convention of 1958. Paragraph 3 of Article I of the Convention, which in itself encompasses any foreign awards, at the same time stipulates that any country may make a declaration to the effect that the Convention shall be applied by such country only with respect to awards rendered on the territory of another contracting state. A number of states, including the USA, have made such declarations. The USSR has made a somewhat different declaration, namely that the provisions of the Convention would be applied "with respect to awards made on the territory of a non-contracting state only on the basis of reciprocity." Based on this declaration, there are reasons to assume, that on the basis of reciprocity, the Convention may be also applied to such awards, in other words, even in the absence of an international treaty with the country where the award was made.[11]

So far as the existing international treaties to which the USSR is a party are concerned, many of them have the "material" conditions specified. In other words, the requirements that awards submitted for recognition or enforcement must satisfy or the grounds on the basis of which recognition or enforcement may be refused (for example, Art. V of the New York Convention) are stated. At the same time, there are treaties, mostly bilateral, which simply establish the mutual obligation of the states to implement arbitration awards, without specifying the above "material" conditions. These conditions, consequently, must be determined in the USSR in accordance with national legislation. Currently, Soviet legislation however, does not contain the necessary guidelines on these matters.

Furthermore, Soviet legislation does not contain any special guidelines concerning the procedure to be followed in the recognition and enforcement of foreign arbitration awards, although most of the international agreements refer to national legislation in that connection. Article III of the New York Convention, provides that arbitration awards are to be recognized and enforced "in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles."

---

[9] Sm. A. L. Makovskiy in the already mentioned book - *Joint Ventures*, 1988, page 293.

[10] Register of the Supreme Soviet of the USSR, 1988, No. 26, Art. 427.

[11] *Handbook on Foreign Trade Arbitration in CMEA Countries*, 1983, page 99.

No specific cases of practical application have been reported so far concerning the enforcement of foreign arbitration awards in the USSR. Soviet legislation, as mentioned above, does not contain special procedural rules to regulate the questions which might arise in that connection. Namely, there are no special procedural rules to cover such issues as the body competent to hear requests for recognition and enforcement of the awards, the properties of such requests including the documents which must be attached; the procedure of the hearing; the document which would serve as the executive writ; etc. In this connection, reference by analogy to the general provisions of the procedural legislation, also legally possible, could generate definite complications and ambiguities, as pointed out on several occasions in literature.[12]

The Decree of June 21, 1988, has established special regulations concerning, in the first place, the procedure of recognition and enforcement of the decisions of foreign courts (Articles 1 - 10), having provided further in Article II that the provisions contained in the preceding articles (with the exception of some of them as relevant only to court decisions), "are also applicable to foreign arbitration awards whose recognition and enforcement is provided for by the corresponding international treaty of the USSR." Based on that Decree, "the question of permitting a compulsory implementation" of an arbitration award "is considered under an application of the claimant by a specified judicial body at the "domicile (location) of the defendant" or "the location of his property" (Article 2).

Article 3 of the Decree establishes the requisites of the above applications, and Article 4, the procedure of its examination by the court. Articles 5 - 7 are related to the court's ruling authorizing or denying enforcement, including the possibility of appeal to higher courts and Articles 8 and 9 relate to the executive writ to be issued on the basis of the arbitration award and the court's ruling authorizing its enforcement as well as the actions of the bailiff to be undertaken in accordance with the legislation of the USSR and Union Republics. Finally, Article 10 is related to the recognition of the arbitration awards that are not subject to compulsory implementation.

---

[12] *Handbook on Foreign Trade Arbitration in CMEA Countries*, 1983, page 101.

ACCOUNTING METHODS AND SYSTEMS EMPLOYED BY INAUDIT WITH RESPECT TO JOINT ENTERPRISES

By
A. S. Antonov
Chairman of the Board
Joint Stock Organization "Inaudit"

Respected ladies and gentlemen. Comrades!

First, I wish to thank the organizers for giving me the opportunity to take part in this seminar.

My topic is accounting principles and current audit practices relating to joint enterprises in the USSR.

As of December 1, 1988, there were 141 registered joint enterprises, representing a total investment of 703.2 million rubles. The amount of foreign investment totaled 267.1 million rubles. Of this, more than 80% came from countries with free market economies, the largest investors being firms from West Germany, Finland and Austria.

The main areas of foreign investment are mechanical engineering, the service and food industries, forestry and chemicals. Investments in engineering forms have reached significant levels.

As you may know, in accordance with decrees by the Council of Ministers of the USSR on January 13, 1987, Joint Enterprises N48 and N49, based in the Soviet Union, conduct efficient bookkeeping and statistical calculations following currently accepted accounting practices used by the government.

Here it is appropriate to emphasize that the accepted methods called for in those decrees conform to the Constitutional requirement for a unified system of accounting and statistics in the USSR.

In the area of basic accounting, the government regulates the status and functions of the comptrollers and the organizations they head, as well as overseeing accounting practices of the factories and combines.

Uniformity is a distinguishing feature of accounting principles in the USSR. This is accomplished by consolidation and standardization of accounting methods and by the introduction and widespread use of standardized forms and documents.

The Ministry of Finance provided guidance regarding accounting principles and bookkeeping in the country. Together with the State Committee on Statistics of the USSR, it approves standard accounting plans and standard bookkeeping forms for enterprises and organizations and instructions for their use.

The most important standard accounting documents are:

- — Statement of the Comptroller
- — Financial Statement and Balance Sheet
- — Accounting Plans and Instructions for its Implementation

The existing accounting system affords an overall view of all financial operations of the enterprise. It is based on internationally accepted principles of accounting. Fundamental to these principles is the detailed documentation of the cost of operations, the dual entry system of accounting, inventory and its valuation, and accurate record keeping. The system used in the USSR is in line with those systems used in other countries. Our system employee forms, balancing of account, profit and loss statements, etc.

It should be noted that due to the special nature and peculiarities of joint enterprises, the Ministry of Finance, together with the State Committee on Statistics has established a number of special considerations and simplifications of accounting for joint enterprises, as compared to other Soviet enterprises.

These, in part, are that joint enterprises can independently introduce changes in accounting forms being used in the USSR and, with the approval of the Ministry of Finance, introduce additional accounting procedures it deems necessary. It may also independently introduce, specify, exclude or combine individual sub-accounts.

Regarding the conduct of accounting by joint enterprises in the USSR, the following is required:

- — All accounting documents, account ledgers and reports must be prepared in Russian. A second language may be stipulated by the foreign partner, if desired.
- — Soviet rubles shall be the monetary unit for accounting purposes.

— Records must be kept regarding the joint enterprise's currency transactions, all operations conducted in foreign currency, as well as records of receipts for payment or settlement of accounts.

— Accounting records and balances are to be presented in the order established by the Statement of Accounting Records. Enterprises are to present their records no later than March 15th to the Ministry of Finance, to the principals of the joint enterprise, to the bank(s) providing financing and to the State Committee on Statistics. These records must have been verified by the Soviet auditing organization, INAUDIT.

The following information must be reflected in the accounting records and balances:

> A complete accounting of all financial operations, money resources and fixed assets, value of goods held in inventory, and estimates;
>
> Bank statements and documents relating to cash flow and balances as shown in bank reconciliations, or any other analytical document provided to the enterprise.

Managers, comptrollers and other persons in positions of responsibility will bear the responsibility for the deliberate presentation of false accounting data and/or misrepresentation of the balances of bookkeeping records in accordance with existing legislation in the USSR.

The procedure for presentation of the joint enterprise's quarterly reports and account balances to their partners is established in their founding documents, as well as by the individual departments of state control and by the Ministry of Finance and the State Committee on Statistics, on request from these agencies.

Now, let me say a few words regarding the problem of differences in standard accounting practices and the compilation of accounting records in the U.S. and the USSR.

We are fully aware that the existence of such differences causes concern in Western partners in joint enterprises. In our opinion, there is no basis for these concerns.

As I stated earlier, the basic principles of accounting are the same as those used in the West. If needed, certain accounting procedures can be carried out in the manner required by the Western partners of the joint enterprise.

Today there are more Soviet-foreign companies abroad than on Soviet soil. Soviet joint enterprises have been functioning under the laws and regulations of foreign hosts for a long time. It is apparent that the differences do not present serious problems for the Soviet partners.

A constructive study of accounting practices will permit the determination of the differences, and the way to resolve whatever problems these differences may cause. At present we maintain contacts with auditors and accounting firms in many countries and we trust that our ability to draw on collective expertise will enable us to resolve any issue that arises in the accounting area.

Audit of Joint Enterprises

The advent of joint enterprises with Western companies and the attendant independence in decision-making and financial operations mandated appropriate changes in the methods employed to verify accounts. Since the government is not the owner of the joint enterprises's assets, it cannot pursue its own interests exclusively in controlling its operations. Nonetheless, the government is interested that the joint undertakings be effectively integrated into the existing economic scheme, especially since it illustrates a progressive form of international division of labor.

On January 13, 1987, the government adopted resolutions which established that audits of the accounts of joint enterprises will be conducted by independent Soviet auditing firms.

The Joint Stock Organization INAUDIT acts like its foreign counterparts, working with commercial concerns on a contractual basis. It performs audits of joint enterprise's general accounting practices and verifies that the compilation of accounting data is in conformance with regulations. It also verifies account balances, and profit and loss statements for the joint enterprises. Close attention is given at all times to areas where improvements can be made. To this end, the results of the audit are compiled by INAUDIT auditors and are freely examined and signed off on by them and the joint enterprise's managers. The auditors then make their recommendations based on the findings of the audit, which the managers have the option to accept and implement in full or in part. This does not apply, of course, to instances where law enforcement is required due to charges of fraud by the audited organization.

Audited statements of profit and loss are then submitted to the Ministry of Finance to be processed for tax purposes.

At this time it is necessary to say a few words regarding audits conducted by foreign firms on joint enterprises based in the Soviet Union.

For tax purposes, the audit of the joint enterprise performed by INAUDIT shall be the basis for collection of tax revenue. INAUDIT's conclusions as to the correctness of the account balances and regarding the observation of the rules of accounting will have full legal force. Audits by foreign firms are not permitted, but this does not preclude access to full and reliable disclosure of the accounts of the joint enterprise.

To this end we have made the necessary contacts with accounting firms in the West to exchange information and work together to achieve the fullest cooperation possible in this area. We trust that our willingness to cooperate to resolve any difficulties will serve to encourage potential participants in joint venture activities with the USSR.

Thank you for your kind attention.

LEGAL MATTERS OF TECHNOLOGY TRANSFER, THE USE OF NEW FORMS OF COOPERATION AND PROTECTION OF INTELLECTUAL PROPERTY

By
Professor M. M. Boguslavsky
Head of Sector of International Private Law, USSR Institute of State and Law

1. In the past years many favorable opportunities were missed for the development of economic relations between the USSR and the USA. This fully applies, as well, to relations in the fields of science, technology, and culture. When restoring and developing relations in all these spheres, in my opinion, one should pay particular attention to the protection of intellectual property. Without guarantees that the rights of authors, publishers, and other owners of intellectual property rights will be observed, the development of cooperation between our countries is impossible. Guaranteeing such rights has nothing in common with suspicion and distrust. Moreover, mutually guaranteeing the rights of intellectual property ownership, clearly defining their contractual relations and their observance in practice - will generally facilitate the strengthening of trust between our countries. The purpose of this report is to consider some specific questions connected with technology transfer and with securing intellectual property rights when using such new forms of cooperation as science, and technology agreements, production cooperation, and creation of joint ventures.

2. In all cases of technology transfer, the question of what should be understood when defining the objects of technological exchange arises. Speaking most generally, these objects represent scientific and technical knowledge, or, to be more precise, scientific and technical results.

Scientific and technical results is the category applied both in the internal legal practice of the Soviet Union and in the field of its scientific and technical cooperation with other countries. In the past practice of Soviet-American cooperation, scientific and technical results were usually understood as the technical solutions made at the level of inventions and industrial designs, irrespective of whether the legal protection of such solutions was obtained or not; "know-how"; project-designing and technological documents, reports on scientific-research work, testing certificates and other similar documents reflecting the results of research and developments.

From the legal point of view, the objects of technological exchange should be divided into two groups. The first group includes the objects the legal protection of which is ensured on the basis of internal legislative norms of countries and international agreements. It includes inventions, industrial designs and trade marks. The second group includes scientific and technical achievements which do not enjoy such legal protection ("know-how", etc.). The question of "know-how" deserves a more detailed coverage.

In the activities of Soviet organizations, transferring "know-how" to foreign counterparts or purchasing "know-how" from them, including the cases when complete equipment is purchased, are very important. This term was applied for the first time in the USA and then was widely recognized in other countries. In practice, "know-how" means technical knowledge, experience or production secrets, required for implementation of the object of license. "Know-how" also includes technical solutions made at the level of inventions which, due to some reason, were not patented or are not patentable under the laws of this or that country.

Originally, licensing agreements included terms and conditions which provided for the transfer to the buyer of technical knowledge and experience ("know-how") as trade secrets required for implementation of the right to use the invention. But, with the development of technology, the significance of transfer of such information became so great that "know-how" turned into an independent object of licensing transactions (non-patent licenses), and such licensing agreements became the main legal form of rendering technical assistance. In the reference book on the questions of international licensing agreements, published in the USA, it was noted that many companies prefer to transfer new inventions, processes and methods elaborated in their research departments on licensing basis as "know-how" rather than to patent them.[1]

---

[1] International licensing agreements. N.Y., 1973, p. 9-10.

In some cases "know-how" is actually an invention which is purposefully kept secret and not patented, or it may be an element of the invention not included in the description. In other cases "know-how" is directly connected with the invention but is not patentable in itself since it does not meet the requirements established in the law. "Know-how" is primarily the result of technical creative activity, though this notion is often applied in other spheres than technology.

Hence, the notion "know-how" is extremely wide and may cover all possible technical and other information.

3. The transfer of technology should be done on an agreement basis. The agreement should clearly determine the rights and obligations of the parties and ensure the conditions for the necessary legal protection of the objects of technological exchange, and scientific and technical results developed in the course of work. Various types of agreements may be concluded such as licensing, order, or joint research work, etc.

Conditions on confidentiality have essential importance for all agreements in this field; that is, the obligations of the parties to keep secret the data including scientific and technical information that they receive, as well as not to divulge the results obtained in the course of work. Upon entering the agreement, each party maintains its rights for scientific and technical information, "know-how", inventions and other similar works. The transfer of these rights to the other side is for a special purpose - the utilization, for example, during carrying out the joint research. They are not to be transferred to other persons.

As for keeping secret the results of joint work, including a restriction on publication, such obligations are taken by the parties in order to ensure the legal protection of the results of the work. In the case of inventions, prematurely divulging any of their essence may lead to the impossibility of obtaining patent protection. The parties may write into their contract the condition that during the exchange of scientific and technical information the parties will proceed from the fact that the information on technical achievements will be transferred only after the applications for patents or other documents, nave been filed, thus ensuring their legal protection.

For instance, in international scientific and technical cooperation, sometimes the following condition is applied: the parties undertake precautions against prematurely divulging information on scientific and technical results of joint developments by means of: publication, radio and television broadcasting, showing the results of research and development at exhibitions, divulging them in reports, at national and international conferences, simposia, etc., in order not to lose the right to obtain patent protection for joint inventions and other objects of industrial ownership.

In some contracts concluded by Soviet organizations with firms from capitalist countries, one may come across such detailed terms and conditions ensuring confidentiality. For example, it is provided that the officials of the parties undertake not to transfer information to third persons. Publication of information on obtained results of work are allowed only upon mutual agreement of the parties, etc. What recommendations can be given on these matters?

First, it is recommended that the contract contain a provision obligating each party to keep secret the information received from the other party. The parties must not transfer it to third persons. Such obligation on non-divulgence of information is stated to be valid for every sphere of cooperation and for a certain period of time; for example, for 10 years from the moment of the beginning of cooperation in this field. This time period can be extended if upon its expiration the parties deem it to be useful.

Second, it is recommended to provide that neither party have the right of future publication in scientific or technical literature of the information on the subject of cooperation received from the other party, except in special cases, when both parties deem it necessary to do so. Scientific or technical publications which will be made by the parties in respect of their own work must not contain any information the divulgence of which could infringe the confidential character of the work and conducted cooperation. In case of possible risk of divulgence of trade secrets, the parties should hold mutual consultations with respect to such publication.

Third, it is possible to provide the following condition: if one party obtains results which may be the subject for filing a patent application, and if such party deems it useful to immediately inform the other party of such results for quick and effective progress of work carried out in cooperation, the first party may request that the other party send written confirmation of willingness to receive such results. If the other party agrees to receive such results, it will not be able to use them in its own patent applications and will have to take all the necessary precautions to maintain the confidentiality of such results until their publication.

Fourth, it can be provided, that if one party suggests an extension of cooperation to the sphere which is the subject of a patent application of the other party, the latter, in case of consent to such cooperation, will transfer the necessary information included in the patent application and in other available material. The party that receives the information will keep it secret until the moment of its publication by the party holding the patent.

The detailed character of the above terms and conditions is called for in order to completely rule out the possibility of violation of the confidentiality condition for the transfer of information to which particular attention is paid by the U.S. companies.[2]

Special attention should be also paid to the question of determining the rights to the results of joint work. The determination of rights to the results of joint work is closely connected with what type of legal protection is provided by the parties with respect to such results. The question primarily concerns copyright - (legal protection, protection based on the legislative norms on copyright) and protection under the norms of patent rights. This matter is solved differently for so- called independent (isolated) and joint inventions.

Before getting down to consideration of the rights of the parties to joint inventions and other results of joint work, it is necessary to note that with respect to information and all kinds of data transferred by one party to the other in the course of work, the right of ownership by the party which transfers the information is preserved.

The answer to the question of the rights to a joint invention is more difficult. The characteristic peculiarity of agreements on the joint fulfillment of work is precisely that the parties have the right to jointly use the results of work and to obtain advantages from the application of such results in the order and on the terms and conditions set forth in the agreement. The agreement normally determines which results of work will be considered as joint ones. For example, joint inventions should be considered as such.

The results of work may be utilized in the countries of the parties to the agreement, as well as in third countries. In the countries of signatories to agreement one can envisage the possibility of unlimited and royalty-free use of the results of the work inside each such country. It is also possible to limit the possibility of utilization to a partner participating in cooperation. The use of the results of work in third countries, can be in the form of transfer of the results to such countries by licensing or by selling equipment manufactured on the basis of joint work. The question of transferring the results of joint work and of determining the terms and conditions for such transfer may be solved in each individual case only upon agreement between the parties. The agreement, in particular, may provide for the grant of exclusive right of use in some territory in one of the countries.

The granting of an exclusive right of use in some territory means that the other cooperating organization may not export to such territories products in which the results of joint work are used. In the case of transfer to third parties of the rights to an invention, the latter may also not export the products to such designated territories to prevent the exclusive rights of the other cooperating organization from being infringed.

4. Certain specific characteristics can be applied to solving questions on protection of intellectual property when carrying out cooperation between the USSR and the USA in the field of fundamental research activities. Possibilities of such cooperation are available particularly in connection with the conclusion of the general agreement between the governments of the USSR and the USA on Contacts, Exchanges and Cooperation in the field of Science, Technology, Education and in Other Fields (November, 1985) and other agreements. When carrying out cooperation it is necessary to provide adequate and effective protection of intellectual property created or given in the course of such cooperation. In my opinion, during conclusion of agreements and contracts it seems expedient to clearly differentiate independent inventions from joint inventions. Independent inventions means inventions created in the process of cooperation between the parties within the framework of agreements concluded by the citizens of one of our countries. Joint inventions are inventions created in co-authorship by the citizens of the USSR and USA, irrespective of whether the invention was created in the U.S. or the USSR, as well as inventions created by the parties in the course of carrying out jointly financed work, if this is provided for by the terms and conditions of the agreement.

Measures ensuring copyright for works created in the course of cooperation are taken by the parties in accordance with the national legislation and international copyright agreements in which the USSR and USA participate. At present this is the Universal Copyright Convention. Questions connected with publication and other application of rights should be solved by mutual agreement between the parties. In case it is not agreed otherwise, each party should be entitled to a-non-exclusive, irrevocable, royalty-free license for translation, reproduction, publication and distribution of published scientific and other works on its territory. At the same time the moral rights of authors should be ensured.

I have several comments on the question of resolving disputes between cooperating parties. Disputes connected with acquisition, the origin itself of the rights of intellectual property, should be resolved according to the procedure provided for by the national legislation of the country where the rights are acquired. Disputes connected with the utilization of intellectual property rights could be considered under an arbitration procedure based on the facultative arbitration reservation for application in contracts in Soviet-American trade, 1977, prepared by the Chamber for Commerce and Industry of the USSR and the American Arbitration Association:[3]

---

[2] Please refer to, for example: Magos P. Legal Problems of Patents, Industrial Designs, Technical Data, Trademarks and Copyrights in Soviet-American Trade. -Denver Journal of Inter-

5. There is currently a great deal of interest in legal problems connected with the transfer and utilization of technology in connection with a joint venture in the USSR. In U.S. business circles these problems are not new and certain experience has been accumulated in their solution.[4] The Soviet side is making only the first steps in this field. It is difficult to overestimate the significance of allowing the creation of joint ventures. In the joint Soviet-American statement made by Secretary Gorbachev and President Reagan, it was pointed out that "commercially viable joint ventures, consistent with the laws and regulations of both countries, could play a part in further development of trade relations".[5]

The Soviet legislation in force (Decree of the Council of Ministers of the USSR of January 13, 1987, No. 49) on joint ventures directly mentions, as one of the aims of their creation in the USSR, the participation in the national economy of the USSR of advanced foreign equipment, technology and managerial experience. It is known that the use of the achievements of the world science and technology in the national economy is a component of the strategic foreign economic policy of the Soviet State. On the other hand, one should not ignore the possible interest of foreign participants in combining the scientific and technical potential of the Soviet and foreign partner in the use in the activities of a joint venture of the Soviet scientific and technical achievements.

With the use of such closer forms of cooperation as joint ventures, possibilities are opened for quicker acquisition and indigenization of new technology, thereby increasing the quality and competitiveness of the products of the enterprise, as well as increasing effective marketing. But, in order to implement all these possibilities it is necessary in each specific case of creation and activity of a joint venture (hereinafter referred to as JV) to solve a number of sophisticated legal and economic problems.

The first problem which often appears, deals with technology. It is the question of the contribution of each party when creating a JV. According to Article II of Decree No. 49 "contributions to the fund of a joint venture may include buildings, structures, equipment and other material values, rights to use land, water and other natural resources, buildings, structures, equipment, as well as the rights of ownership including the right for the use of inventions, know-how, monetary means in the currencies of member-countries of the joint venture and in freely convertible currency". If we speak about the possible technological share of the contribution of the Soviet participant, this primarily may be the rights for the use of "know-how", belonging to a Soviet participant. It seems expedient in such a case to conclude a simple licensing agreement for the use of "know-how", i.e., in other words, an agreement that creates conditions for the use of "know-how" by the JV with simultaneous preservation of the right of the Soviet partner to use the "know-how". The situation seems more complicated for inventions created under the conditions of the industrial propriety system in force in the USSR at present. If an inventor's certificate is available, the right to use such invention belongs not only to the Soviet participant in the JV, but to all Soviet state and cooperative enterprises, and the exclusive right to such invention to the Soviet State. In our opinion, special permission is not required from any State body, like the patent organization, since the fact of conclusion of the joint venture agreement itself and the approval of the agreement by a competent Soviet authority such as a branch ministry or Council of Ministers of a Union Republic should be considered as such consent. At the same time, probably the conclusion of an agreement, besides a licensing agreement or the adoption of an obligation by the Soviet side will be required, which will envisage the actual possibility for the use of such invention by the JV. In Soviet literature there is also another point of view, according to which the draft establishing agreement should be agreed upon with the Committee for Inventions and Discoveries or with the GKNT, if in connection with reorganization the relevant functions will go directly to GKNT. In this case, no additional special permission for giving the license of JV to the Soviet participants will be required.[6]

Hence, in interpretation of the legislation in force, there are some differences, although the end result coincides. In the future, during the transition to new legislation, if the patent will be introduced as a form of legal protection of inventions in the USSR this problem will not exist, since with the new system, the Soviet enterprise-participant of a JV will be solely authorized to conclude a licensing agreement on the use of an invention.

---

[3] Dee S.N. Lebedev. International Cooperation in the Field of Commercial Arbitration. M. 1980, p. 192-194.

[4] See International Joint Ventures, Dobking, Burt J. and others. Wash, 1986, p. 4.19-4.21, 8.2-8.13.

[5] Visit of the General Secretary of CC CPSU to the United States of America (December 7-10, 1987). Documents and Materials, M., 1987, p. 157.

[6] For more details regarding this matter see: O.Vs Vorobiev. Joint Ventures and Questions of Industrial Ownership - Collection "Legal Position to Joint Ventures on the Territory of the USSR". 1988, p. 114.

In the case when technological contribution is made by a foreign participant during the creation of enterprise, the decisive role will be played by licensing relations. The rights for the use of "know-how" or an invention can be transferred to the JV under a license. A license can be simple or exclusive. Theoretically, in the case of receipt by a foreign participant in the USSR of a patent for an invention, complete reassignment of patent rights may be involved, but, it seems, it will hardly be used in practice. The cost of a license given as contribution for the use of scientific and technical achievements and its terms and conditions should be determined either in the establishing agreement or in a special agreement. The evaluation of a contribution of such a nature seems difficult. It is evident that during there solution of this matter, the experience of determining the licensing remuneration may be applied.

When determining the cost, one should probably take into account the unit price of products which will be manufactured under the license as well as the volume of products which is intended for manufacture during the entire period of the license. The type of object transferred under license or of its legal protection for example, invention or "know-how" will also be considered when computing the cost.

In Soviet licensing practice, other criteria are also adopted, which may be used to determine the cost of the "technological share" of contributions of a unique character; of license degree; of indigenization of technology, etc. Of course, all these matters can be resolved only in the course of discussions between the partners.

The cost can be determined in the form of the total lump sum remuneration or on the basis of percentage allocations of royalties during the possible period of utilization. The calculated amount shall form the installment of the partner into the JV capital.

The second point in dealing with technology transfer isto determining the terms and conditions of the transfer to the foreign participants of the rights for the use of the scientific and technical achievements acquired or developed in the process of activity of such joint venture. Relations of such nature should be determined in the licensing agreements, but such agreements should probably differ from common licensing agreements since they will determine the relations on technology transfer which normally appear in the international practice of technology transfer between the parent and subsidiary companies.

Actually, in its content, it will be an the intra-company transfer of technology, although from the legal point of view foreign partner and joint venture - are two independent legal subjects of various countries. It seems that from the point of view of legal regulation of the licensing operations, the agreements of such nature should be considered as agreements on international technology transfer. From such an approach it follows that the permissive procedure established in the USSR for conclusion of licensing agreements, if special rules are not adopted in this respect, should be applied to JV licensing agreements with the companies from capitalist and developing countries. Until now, such special regulation was applied to relations on transfer and receipt of documentation containing inventions and "know-how", with organizations of CMEA member countries.

A Soviet enterprise which concludes a licensing agreement with a JV is not required to observe the permissive procedure in force in the USSR in the field of licensing trade.

The third point on transfer of technology in the context of a JV - is the question to whom should the scientific and technical result created in the course of activity of the JV belong and what is the procedure of its utilization? In literature two variants of an answer to this issue were discussed.[7] According to the first variant, the objects are considered as joint inventions and "know-how", the rights to which belong to the JV participants. According to the second variant the rights to these objects are considered to belong to the JV itself.

According to item 17 of Decree No. 49 "the rights to industrial ownership belonging to joint ventures are protected in accordance with Soviet legislation, including the ownership in the form of patents. The procedure of transferring the rights to industrial ownership to the joint venture by its participants and by the joint venture to its participants, as well as commercial application of these rights and their protection abroad are determined by the establishing document". The above provision, in our opinion, means, first, that Soviet legislation proceeds from a recognition of rights to inventions and other objects created at the joint venture as belonging to the joint venture itself acting like a juridical person and not to its participants. Second it means that Soviet legislation guarantees to the joint venture the complete freedom to determine on its own, the terms and conditions of transfer of such rights to its participants as well as the terms and conditions of commercial implementation of such right.

For those joint ventures where inventions and "know-how" will be created, it seems expedient to regulate the entire scope of problems that might appear in a special annex to the establishing documents.

Special attention should be paid to the fact that when the system of inventor's certificates is in force in the USSR, exception was made for joint ventures. Namely, the possibility was envisaged for obtaining patents for inventions created at the joint venture. Applications for obtaining a patent in the USSR should be submitted by the inventor or his legal successor with the indication in them of the actual invention. (Item 40 of Provisions on Discoveries, Inventions and Rationalization Proposals, 1973.) How a joint venture will ensure, under such regulation, its own rights and interests depends on how this matter will be resolved in the establishing documents or in special internal rules on industrial ownership set forth by the JV itself, or in labor agreements concluded by the JV with its personnel. Hence, in such a labour agreement it would be possible to envisage that the right to inventions made by an employee of the joint venture in the line of duty, related to the purpose of the JV activities, will go to the JV itself. So, the conditions of such an invention will differ from the conditions of inventions created by workers in Soviet state enterprises, since under the legislation now in force, the right to the invention belongs to the State, and the inventor receives an inventor's certificate with all of the resulting consequences.[8]

---

[7] See O.V. Vorontev. The above works, p. 118 and onwards.

The fourth question which should be examined is the question of trade marks. The document establishing creating the joint venture should contain a provision on which trade mark the products of the joint ventures will be sold under in the country of its location, in the countries of participants and in the markets of third countries.

Proceeding from practice, various options are possible here: first, the use of a trade mark of the registered joint venture for marking its products, i.e. the use of a joint trade mark the graphical image of which reflects the elements of the brand names of participants; second, the use of a trade mark belonging to one of the participants; third, the use of the joint venture's trade mark together with the trade mark of the participant.

In this case, the recognition of the trade mark in the markets of the respective countries is taken into account, its reputation should facilitate the promotion of commodities to these markets.

The terms and conditions of transfer to the joint venture of the rights to use a participant's trade mark are normally agreed upon in a separate licensing agreement concluded between the joint venture which acts in this case as a licensee, and the respective participant-licensor at the time the joint venture is created. The agreement envisages the time of transfer of the rights, usually for the duration of the joint venture, the amount of remuneration to be paid to the licensor, the scope of rights (normally a non-exclusive license without the right of issue of sublicense), the list of countries where the products with the use of the trade mark will be sold, description of products to be trade marked, the terms and conditions of licensor of the quality control of goods by the licensor, the responsibility of the sides, etc.

Naturally, in the USSR, trade marks will be registered in accordance with the Soviet legislation: by Decree of the Council of Ministers of the USSR on Trade Marks 1963 and Provision on Trade Marks 1974, (as amended in 1979). The owner of a trade mark registered in the USSR has the exclusive right to use the mark. The registered mark may be used by all means.

Such are some issues of intellectual property and, first of all, industrial ownership appearing when the new forms of international cooperation with the USSR are used. The additional measures adopted in the USSR in December 1988, provide more favourable conditions for creation and activity of joint ventures organized on the territory of the USSR with participation of foreign organizations and companies and will facilitate the further development of this form of cooperation between the USSR and the USA.

---

[8] See Joint Ventures, International Associations and Organizations on the Territory of the USSR. Normative Acts and Comments M., 1988, p. 223.

JOINT VENTURES IN THE USSR WITH PARTICIPATION OF FIRMS IN CAPITALIST COUNTRIES (LEGAL QUESTIONS OF ESTABLISHMENT AND OPERATION)

By
S. Yu, Ryabikov
Section Head
Main Legal and Treaty Department
USSR Ministry of Foreign Economic Relations

The specific feature of the on going radical reform of foreign economic relations in the USSR is to make them more flexible, dynamic and efficient, apart from improving the conventional forms of trade and cooperation. This presupposes an active search for and application of such forms of foreign economic activities, which are new for the current level of relations, among which, of the greatest interest, is establishing joint ventures in the USSR with participation of Soviet institutions and firms in capitalist countries (hereinafter referred to as "JVs").

Today, the purposes of establishing JVs is to saturate the USSR market with specific types of industrial products, commodities and foodstuffs, to obtain advanced foreign equipment and technology, managerial experience, extra material and financial resources for the national economy of the USSR, and to develop the export base of the country and reduce unnecessary imports.

With respect to JVs, the Soviet Government is pursuing a stable, irrevocable policy which stems from the imperative necessity of the USSR's active participation in the international division of labour. Confirmation of this policy is clearly present in the decision of the Politbureau of the CPSU Central Committee of 6 October, 1988 which stressed the necessity in all-round assistance in setting up JVs.

As of December 2, 1988, JVs were registered with the Ministry of Finance of the USSR. Out of this number only JVs were set up with participation of organizations in socialist countries and the rest with firms in capitalist and developing countries. In terms of the number of the established JVs, the FRG has gained the lead. Firms in the FRG have set up JVs, then follows Finland (JVs) and Austria (JVs).

The current total authorized capital of all the JVs amount to nearly a million rubles. The JVs have been set up in various branches of economy. For instance, computer engineering, and programmed control, process industries, production of consumer goods, trade, construction, engineering services etc.

Nearly 50% of all the JVs were set up in Moscow and the rest in other cities of the USSR in various regions. Today about 20 JVs have already started to manufacture products or supply services, and the rest are still at the stage of formation.

There is already good demonstration of the successful operation of JVs. Thus, for instance, the "Lenwest" JV, which was registered on 15 October, 1987 and set up in Leningrad by "Salamandra" from West Germany and the footwear factory "Proletarskaya pobeda", sold 150 million pairs of top quality footwear on the Soviet market. The JV participant in West Germany is examining an increase in the manufacture of footwear for export.

Firms in the USA have by now JVs on their record. The following are registered:

- the AES - Pris JV with participation of "Combustion Engineering Inc.", whose subject of activities is to develop, design, manufacture and commission automatic process control systems in the oil refining and petrochemical industries.
- the "Dialogue" JV with participation of "Management Partnership International Inc.", which was set up for manufacture of software products, assembly of personal computers, marketing of products; production, processing and marketing of other products and providing services;

— the "Sovelan Aroma" JV with participation of "Elan International", whose subject of activities is to produce aromatizers and flavour additives;

— the "Sterh-Automatization" with participation of two Austrian firms and one American company, "Honeywell Inc.". It will be engaged in designing control systems, engineering, developing the software for customers to enhance their production efficiency;

— the "Perestroika "JV" with participation of "Delfai International", whose subject of activities is construction, reconstruction of buildings and structures, and provision of services in the service sector;

— the "Laiks" JV with participation of "Relex International", whose subject of activities is research, development, testing and evaluation of problem-oriented information systems.

American companies have presented a whole range of proposals on establishing the JVs in the USSR, which are now under examination.

Legal standards of establishment and operation of the JVs and trends in their development

We should frankly admit that our JV legislation is still not perfect. We do not have enough experience in this business; that is why we are lending an attentive ear to constructive criticism and, in particular, on the part of foreign scientists and practical workers. In this connection, it is difficult to overestimate the significance of symposia and seminars dedicated to this subject.

When we, in the USSR, worked on the JV legislation we took into account and studied the experience of foreign countries and, in the first place, of socialist countries. We also took into account the experience in setting up mixed stock companies abroad with Soviet interests, Today the USSR has over 120 such stock companies of which the active process of formation started in the 1950's. Many such companies are in West Europe. They are operating mainly in the sphere of trade and transport—servicing of foreign trade cargoes.

Now that practically two years have passed since the Soviet JV legislation has been enacted we can already sum up and review the process of setting up the JVs in the USSR.

The main statutory acts regulating the establishment and operation of the JVs with firms in capitalist countries in the USSR are:

— Decree of the Presidium of the Supreme Soviet of I3 January 1987;

— Decree of the Council of Ministers of the USSR of 13 January 1987, No. 49 (with amendments introduced by the decision of the CPSU Central Committee and the Council of Ministers of the USSR of 17 September 1987, No. 1074 and of 17 March 1988, No. 352 and the Decree of the Council of Ministries of the USSR of 2 December, 1988).

In addition, some questions are regulated by departmental standard acts, for instance;

— Instruction of the Ministry of Finance of the USSR of 24 November 1987, No. 224 on procedure for registration of the JVs;

— Instructions of the Ministry of Finance of the USSR of 30 April 1987, No. 124 with amendments of 30 November 1987 on the procedure of tax administration for the JVs;

— Instruction of the State Bank of the USSR and the Bank for Foreign Economic Affairs of the USSR (Vnesheconombank) of 22 September 1987 on credit facilities for the JVs;

— Decision of the State Committee of the USSR for Material and Technical Supplies of 4 June, 1987 (supplemented on 4 November 1987) which approved the procedure for material and technical supplies for the JVs.

A number of other standard acts, also apply to the operation of JVs such as, standard acts regulating the tax administration for foreign juridical and natural persons. Their activities are also regulated by the general norms of the Soviet civil and labour legislation.

Analysis of the development of the JV legislation allows one to conclude that it has the tendency to improve through important additions and amendments as practical experience is accumulated. Such a tendency is inherent to a number of other socialist countries (for instance, the Chinese People's Republic, Hungary, Poland). The process of perfecting the JV legislation testifies to the fact that the USSR is keen to ensure the most favorable investment treatment in the country.

Amendments made by the decision of the CPSU Central Committee and the Council of Ministers of the USSR of 17 September 1987

The decision of the CPSU Central Committee and the Council of Ministers of the USSR of 17 September, 1987, No. 1074, has introduced a number of important amendments to the Decree of the Council of Ministers, No. 49. It can be said that Decree No. 49 was modified in favour of Western partners, i.e. it provides for a more favorable attitude of Western partners towards the JVs in the USSR.

Suffice it to say that by 17 September, 1987 only 7 JVs were registered with the Ministry of Finance of the USSR and after that date, the process of establishing JVs went steeply upward. The said decision introduced the following important amendments:

The procedure of imperative coordination of draft constituent instruments and feasibility studies with the State Planning Committee of the USSR, the Ministry of Finance of the USSR and other ministries *has been eliminated.*

The procedure for evaluating contributions to the authorized capital has been modified. Previously contributions of both the Soviet participant and the foreign participant were to be evaluated in rubles, this gave rise to unfavorable criticism on the part of the foreign participant both in Soviet and foreign currency at contract prices with due regard to the world market prices.

The procedure for assigning interests by the JV participant to third parties has been simplified. Before, such assignment was to be authorized by the State Foreign Economic Commission of the Council of Ministers of the USSR, and now such permission is given by a ministry of the USSR or the Council of Ministers of the Union Republics which took the original decision on setting up the JV.

The procedure of the JV operation on the Soviet market has been facilitated. Before, JV products were sold on the Soviet market and raw materials, power, fuel, supplies were purchased on the Soviet market *only through Soviet foreign trade associations* and only *in rubles* with due regard to *the world market prices.* Now the sale and purchase procedure as well as the type of settlement currency is laid down by the JV by agreement with the Soviet buying and selling organizations.

In this connection it should be taken into account that now Soviet organizations and enterprises dealing with export have exchange funds which they can use not only for purchasing products abroad but from a JV.

When it comes to the material and technical supplies it should be noted that the JVs have several sources:

- through wholesale market (i.e. through organizations of the State Committee of the USSR for Material and Technical Supplies);
- through the supply system of the sectoral ministry (with respect to the products which are distributed in the centralized order);
- through the retail network;
- through a foreign trade organization (the JV can order import products);
- by direct access to the foreign market or through the marketing system of the foreign partner.

Tax treatment has become more favorable According to the Decree No. 49, the JV was exempt from the profit tax over the first two years of its operation; now the exemption is for the first two years from the date when the profit is first declared.

Amendments introduced by the Decree of the Council of Ministers of the USSR of December 2, 1988

Significant changes to the JV legislation were also made by the Decree of the Council of Ministers of the USSR of 2 December 1988 "On further development of foreign economic activity of state, cooperative and other public enterprises, amalgamations and organizations". It should be noted that this Decree took into account the hitherto wishes of our Western partners and scientists with respect to a whole range of questions that had produced a negative list of criticism of our JV legislation.

To make the system of establishing JVs in the USSR more workable, it was established, in particular, that:

The shares of Soviet and foreign participants in the authorized fund of the JV are to be agreed between the participants. Hence, the imperative rule contained in Decree No. 49 which fixed the maximum share of the foreign participant in the authorized fund of the JV at the rate of 49% has been changed. Now, the share of the foreign participant is practically unlimited.

The *limitation* set forth by Decree No. 49, saying that *foreigners cannot hold the post of the Chairman of the Board or the General Director of the JV* is lifted. From now on, the JV participants will, by mutual consent, decide who will hold the above mentioned posts, either a Soviet or a foreign citizen.

It is stipulated that the principal questions of JV operation are to be the subject of Board meetings and that the decisions thereon are to be made on a basis of consensus of all its members. In our opinion such an approach presupposes a more democratic solution of important and complicated questions by a consensus method, regardless of the difference in the shares of the JV participants.

It is established that the *questions relating to employment and dismissal, modes of payment and salaries, as well as of material encouragement in Soviet rubles for the JV employees are to be decided by the JV's proper.* Thus, provisions of Decree No. 49, envisaging, in particular, that payment of the Soviet personnel services are to be regulated by the Soviet legislation were changed. So, wider opportunities have appeared for the JV to ensure the material interest of JV personnel.

The JV was granted *extra tariff preferences* with respect to goods brought to the USSR for the needs of production development. Minimal customs duties will be levied on such goods or they will be exempt from customs duties.

The procedure of establishing the JV has been simplified. Originally, according to Decree No. 49, it was the Council of Ministers of the USSR that gave permission to set up JVs. The Decree of 17 September 1987 further authorized ministries and departments to issue such permissions. The recent Decree of 2 December 1988 permitted Soviet enterprise - founders to take independent decisions on establishing the JVs with the consent of a higher management body.

To establish more favorable tax treatment for the JVs operating in specific branches of industry, the Ministry of Finance of the USSR was accorded a right to grant tax holidays for a definite period of time with respect to a part of profit due to the JV foreign participant in the event of its repatriation, or tax relief. This right will be enjoyed by the JVs which are engaged in manufacture of consumer goods, medical equipment and medicines, highly scientific products of appreciable national economic value, as well as by the JVs situated in the Far East economic region.

Besides, the Decree of the Council of Ministers of the USSR of 2 December 1986 envisaged further benefits for JVs set up in the Far East economic region.

To further stimulate the formation of JVs in the said region, such enterprises are exempt from profit tax over the first three years from the moment the JV gains the declared profit. That means that the JV is accorded a one extra year tax holiday as compared with the JVs located in other areas of the USSR. The Ministry of Finance of the USSR is authorized to provide a profit relief for the JVs set up in the Far East economic region up to 10% (instead of 30% in other areas of the USSR).

It should be noted that the Soviet JV legislation is currently further developing and perfecting. This may necessitate developing corporate law in the USSR of the type West European countries have. Such corporate law would allow for regulation in many complex questions relating to establishment, operation and dissolution of the JV. The Soviet legal scientific community advocated the feasibility of developing such a corporate law a long time ago and today there is a real hope that this will be switched over onto the practical plane.

International *Mutual encouragement and investor protection treaties* with foreign states may be of great help in creating a more favorable investment treatment in the USSR.

The USSR is currently negotiating such treaties with a number of countries in West Europe. The treaties would contain, for instance, the obligation of the parties to avoid forced withdrawal of investments (for instance, nationalization, expropriation) without appropriate compensation, guarantee of free remittance of payments incidental to capital investments, and settlement of eventual disputes. Such treaties would be of great practical value for the USSR which has, as it is known, joint stock companies in many Western countries.

New potential Soviet partners with whom firms in the West can set up the JVs have appeared quite recently in the USSR.

What we mean are Soviet *cooperatives*.

The USSR Cooperatives Law, enacted on 26 May 1988 authorizes cooperatives to establish the JVS, including with firms in capitalist countries. Such a right is accorded only to cooperatives engaged in production activities. By now eight cooperatives have already formed JVs.

At present the USSR is studying the possibility of establishing *free economic zones* where the JVs would be located. In his speech on 17 September, 1988 in Krasnoyarsk M.S. Gorbachev said that creation of such a zone in the Far East is under consideration now. It was noted that favorable tax treatment, licensing of foreign economic transactions and taxation to such a zone should be applied.

Statements now appearing in the Soviet press indicate the intention to open a free economic zone near Nahodka located on the Pacific Ocean coast.

We believe that creation of similar free economic zones would permit some difficulties and problems which are arising now when the JVs are set up far away from the municipal and industrial areas to be surmounted. There are some difficulties, for instance, in provision of foreign specialists with adequate living accommodations, foodstuffs, kinder-gartens and schools with teaching in foreign languages. There are also difficulties when it comes to taking telex communication and long-distance telephone communication lines to a JV located in remote areas.

A further event in the life of the JVs in the USSR is worth mentioning. In September 1988, the meeting of the General Directors of the JVs established in the USSR founded its *Association*. The Association has the status of a juridical person. The purpose of its formation is to champion the interests and protect the rights of the JVs. The Association is a public, non-commercial organization, i.e. its activities are not aimed at generating profits.

The general guidance of the Association comes to the competence of the Board and its decisions are implemented by the executive committee (3-5 persons). The Association has funds consisting of contributions made by its members.

The programs of the Association include:

- construction of living accommodation and hotels;
- construction of sanatoriums and holiday hotels for the Association members;
- training of personnel;
- arrangement of advertizing, publication of its bulletin;

Some questions allied to the establishment and operation of a JV

In addition to what was said about the changes in the JV legislation I wish to touch on some basic questions relating to the JV activities.

The JV participants, registration and term of operation of the JV. It is worth mentioning that according to Decree No. 49, any Soviet organization, including an organization which does not have direct access to the foreign market, has a right to set up a JV. The only limitation is that both the Soviet and foreign participants must be juridical persons; the number of participants from either side is not restricted.

From the moment of registration with the Ministry of Finance of the USSR, the JV becomes a juridical person according to Soviet legislation and acquires full legal capacity and competence. The JV has its own Charter approved by its participants. Decree No. 49 outlines the list of questions which should be reflected in the Charter. This list is not exhaustive and provides the parties with ample opportunities for creative work in the sphere of rules and regulations.

Soviet legislation does not fix any concrete limit on the term of operation of the JV. It leaves the decision on this question to the discretion of the participants.

The JV assets. The JV assets (the authorized fund) consist of contributions made by its participants. The authorized fund can be replenished from profits gained as a result of the economic activity of the JV and additional contributions. The size of the authorized fund, and the contributions of the participants, as well as the procedure of creating the authorized fund (in particular, in foreign currency) must be specified by constituent documents.

Material assets, property rights, and foreign currency can be contributed to the authorized fund of the JV. The procedure for assessing the contributions of the participants to the authorized fund is specified.

With respect to the equipment, materials and other assets brought to the USSR by foreign participants as a contribution to the authorized fund of the JV, favorable tax treatment is accorded and such property is fully duty-free.

Decree No. 49 contains a provision which guarantees the JV property protection, i.e. the property is not subject to requisition or confiscation in an administrative order. It is subject to attachment only by a court of law decision or in some cases by an ad hoc court decision. It is necessary to underline that according to Soviet law, requisition cannot be effected without compensation of the requisitioned property (Article 31, Fundamental Civil Legislation of the USSR and the Union Republics). It is also necessary to take notice that JVs are accorded favorable treatment of their property rights protection. In this matter, the provisions laid down by Soviet legislation for Soviet organizations which in some cases contain more severe directions in relation to the property rights protection than the general Soviet civil legal acts are applied to the JVs.

Being a juridical person, the JV is liable for its obligations to the extent of the property belonging to it. At the same time, it is important to emphasize that the property responsibility of the Soviet state, the JV participants and the JV proper as a juridical person is secured. The Soviet state and the JV participants are not liable for the obligations of the JV and the JV is not liable for the obligations of the Soviet state and the JV participants.

Settlement of disputes. Disputes between the JV and Soviet organizations, disputes between two or several JVs, as well as disputes between the JV participants are subject to consideration either in a court of law or if the parties so agree - in an ad hoc court. In this connection it is worth mentioning that in the USSR under the auspices of the Chamber of Commerce and Industry there are two standing courts of referees, the Marine Arbitration Commission and the Arbitration tribunal.

According to Soviet legislation, settlement of disputes between the JV and foreign firms and organizations is left to the discretion of the parties concerned. The procedure for settlement of disputes is to be envisaged in contracts. The disputes might be considered, for example, either in one of the said arbitration bodies attached to the Chamber of Commerce and Industry or abroad in the *Standing Arbitration* or an ad hoc arbitration court.

Bodies of the JV and its relations with Soviet institutions and organizations. The essence of a JV per se presupposes that the JV participants manage its activities in concert. The JV is operating on a cost-accounting, self-financing and break-even basis and in this connection competent management of the JV activities has a great effect on the success of an undertaking, and acquires special importance.

To guide the JV activities, two bodies are established; the Board, the high body of the JV, which consists of persons appointed by the JV participants; and the Directorate which guides the routine activities of the JV and consists of Soviet and foreign citizens.

The JV enters into relations with the central bodies of the Government organs of the USSR and the Union Republics through bodies which are higher in relation to the JV participant, and with local government organs and other Soviet institutions - directly.

Procedure of the JV operation. The JV is not integrated into the Soviet planning system. It is independent in working out programs of its economic activity. The JV is not given planned assignments, and at the same time the Soviet state organizations do not guarantee marketing of their products.

However, it does not mean that the State does not assist the efficient operation of the JV. For instance, provision is made for establishing preferential quotas with respect to construction and erection works and material resources required for construction of projects for the JV. Such quotas are earmarked as a priority, this being of great positive value especially in the making of the JV. A free right to use land, minerals and natural resources accorded to the JV should be also viewed as an appreciable privilege (Clause 4 of the Decree).

The activity of the JV in the sphere of foreign economic relations is not restricted in any way. The JV can carry out foreign economic activity by direct access to the market or through Soviet foreign trade organizations or marketing channels of JV foreign participants. Moreover, the JV is urged to be active in foreign trade operations. Operating on the principle of full recoupement in hard currency, the JVs should cover all their foreign exchange costs from the earnings costs gained from selling their products on the foreign market.

Decree No. 49 envisages that the JV has a right to obtain credits both in rubles and in foreign currency. The JV can receive the foreign currency from Vnesheconombank of the USSR, or with the latter's consent in foreign banks or firms. The JV monetary means are credited to their ruble and foreign exchange accounts to the State Bank of the USSR and the Bank for Foreign Economic Affairs of the USSR, respectively.

The JV creates a reserve fund and other funds (for example, the production and science development fund, the depreciation fund, the social and recreational fund) required to perform its activities and social development of the JV collective.

The JV profits. The JV profits, after non deductions on the amounts for the State Budget of the USSR and amounts for creation and replenishment of the venture funds, are distributed between the JV participants according to their pro rata the shares in the authorized fund. In this connection, provision is made for mandatory profit deductions for the reserve fund which are continued until this fund reaches 25% of the JV authorized fund. The JV participants themselves can fix the size of annual deductions for the reserve fund. It can be set forth in the constituent documents. The constituent documents can list other funds of the JV and lay down the procedure of their formation and application.

The security which is provided for repatriation of profits in hard currency by foreign participants gained as a result of distribution of profits earned by the JV is of great importance.

To conclude it can be noted that the Soviet JV legislation is developing rather rapidly and, as it was said before, is aimed at establishing more attractive conditions for investing in the USSR.

JOINT VENTURES; SOME PRACTICAL QUESTIONS SURROUNDING THEIR FOUNDING AND FUNCTIONING

By
B. O. Kozhevnikov
Candidate of Jurisprudence

This report will discuss some of the questions that arise when attempting to take advantage of the opportunities provided by Soviet law for the founding of joint ventures within the USSR. These questions are not interrelated and could be examined separately; however, they will be consolidated so that the answer to each question, or more precisely, to each set of questions, will constitute a building block relative to laying the groundwork for establishing joint venture within the Soviet Union. Reference is made to the questions involved in seeking a partner to establish a joint venture; to the compatibility of the respective goals of Soviet enterprises an foreign companies; to questions surrounding the labor laws currently in force in the USSR; and to questions of taxation.

1. Seeking a Partner for a Joint Venture

Several means exist whereby Soviet associations, enterprises, and organizations can obtain information concerning potential partners and can establish contact with these potential partners.

The foremost of these is via a previous collaboration, initiated through the appropriate foreign trade association. A number of joint ventures have sprung up between partners that already knew each other well, that had engaged in industrial cooperation at some earlier date, and that collectively viewed the founding of a joint venture as the next logical step in the development of their relationship.

The ministries and departments of the various branches of industry represent another source of information with respect to potential partners and projects. I would remind the audience that it is precisely these agencies—the aforementioned ministries and departments—that make the decisions concerning the establishment of joint ventures, and that provide the necessary conditions for and ensure the growth of a joint undertaking within a given branch of industry. As a rule, information relating to possible non-Soviet partners passes through an administrative board for foreign affairs, although other subdivisions within the central machinery of these ministries and departments can also take an active part in the establishment of contact. Relative to those instances wherein reference is made to enterprises with local subordination, the appropriate subdivision of the local government body such as the Council of Ministers of a union republic becomes the communicating link. For example, if reference is made to the opening of a restaurant in the city of Moscow, this role would fall to the Moscow City Council of Workers' Deputies (MOSSOVIET).

The representatives of foreign companies in the Soviet Union, who themselves are looking for interested Soviet enterprises, play a vital role in the search for partners. In addition, instances are possible in which Soviet organizations are transformed into foreign company representatives.

This complicated system can scarcely be regarded as satisfactory. At present, interesting projects and reliable partners sometimes find each other as a matter of random chance. It is not possible to approach the resolution of this problem in a comprehensive and systematic manner. Because of this, the Soviet Chamber of Industrial Commerce is taking steps to ensure the establishment of a system which will avoid the imperfections that currently exist. Information relating to Soviet and foreign proposals for collaboration has begun to appear in Chamber publications on a regular basis. The information being published is of great interest. The "Inpred" [Foreign Enterprise] firm is operating successfully within the framework of the "Sovintcentr" [Soviet Information Center] All-Union Association, and a new firm, called "Mediator", has been established. Both of these firms are engaged in seeking partners for collaboration based on orders received from foreign companies, and also provide assistance to Soviet organizations.

The expositions held in the USSR and, to a lesser extent, those held abroad to which, for a number of reasons, Soviet organizations still have limited access constitute an effective means for identifying a potential collaboration project and an appropriate partner. At the international and foreign expositions held in the Soviet Union under the auspices of the Soviet Chamber of Industrial Commerce's "Ekspotcentr" [Exposition Center] All-Union Association, special booths that display the banner "I Am Looking for a Partner" afford Soviet enterprises the opportunity of making direct contact with the representatives of foreign companies and of discussing the questions that arise. Negotiations that had their start at expositions of this type are currently under way relative to a number of projects for the founding of joint ventures.

A new organization within the Soviet Chamber of Industrial Commerce the "Vneshekonomservis" [External Economic Service] All-Union Association, which housed the Chamber's Counselling Center will give overriding attention to the search for companies to participate in projects involving the founding of joint ventures. This Center has already begun making an effort to identify Soviet organizations that are interested in establishing cooperative relations with foreign companies: the appropriate advertisements have been placed in newspapers and the incoming responses are being fed into a computer in a standardized format.

It would appear that this will make it possible, in the very near future, to create a satisfactory bank of data concerning the projects available in the USSR for the founding of joint ventures. The next step in the establishment of an extensive partner search system will be to enlist foreign data banks and to get the appropriate information to Soviet enterprises. It is intended that this problem also be resolved by means of setting up joint counselling and mediating agencies. Upon completing these tasks, the "Vneshekonomservis" All-Union Association will then be able to ensure an expeditious and, at the same time, sufficiently in-depth search for partners and projects that are amenable to joint undertakings, both on orders from Soviet organizations and firms and on those from their foreign counterparts. A number of such orders have already been successfully filled to date. The matter at hand is making further progress in this area.

The most important element in seeking partners for a joint undertaking is the analysis of the respective goals of the partners. The success of a project is largely dependent upon the compatibility of these goals, which must be frankly and openly discussed by both sides. As concerns the Soviet side, when such ventures are founded in compliance with Soviet law, those ministries and departments to which the Soviet participants in a joint venture are subordinate must make it their aim:

— to satisfy the country's needs for specific types of commercial products, raw materials, and foodstuffs as fully as possible;

— to draw advanced technology, know-how, management experience, additional stock, and financial resources into the national economy of the USSR;

— to develop a national export base, and;

— to curtail impractical imports.

These same objectives stand before Soviet enterprises that participate in a joint venture. The Soviet statute entitled "The State Enterprise", which went into effect on June 30, 1987, stipulated that Soviet enterprises would engage in external economic activities based, as a rule, on cash self-repayment and self-financing. In this vein, Soviet enterprises view one of the goals of their participation in a joint venture as the generation of cash revenues. Soviet enterprises are also interested in founding joint ventures for the purpose of putting into practice those Soviet scientific and technical advances on the basis of which the creation of a new product is possible, in enhancing the effectiveness of their capital investments based on advanced foreign technology and know-how, and in bringing management experience into play over the course of their venture.

Regarding the foundation of a joint venture, the Soviet participant realizes the need for proposing those conditions which will ensure that the venture functions normally, while taking the interests of the foreign partner into consideration (the availability of raw materials, the reliability of the delivery of these materials, access to electric power and so forth at competitive prices, the allocation of a skilled work force, the geographic location of the joint venture, etc.).

While a number of the respective goals of founding a joint venture by Soviet and foreign partners coincide (as exemplified by the establishment of an efficient production process with a low product cost, the generation of a competitive and profitable demand for this product, and the utilization of state-of-the-art scientific and technical advances), differences also exist in the approaches that these partners take in founding such a venture. In many cases, the chief goal of the foreign participant is to tap a market within the USSR, whereas the Soviet participant is interested in generating revenues by exporting the joint venture's product abroad. Thus, the resolution of the question of founding a joint venture within the USSR will often depend upon the extent to which the participants in such a venture are successful in achieving a balanced accounting of these interests over the course of negotiations.

The question of cash self-repayment is of decisive importance to reaching an agreement and the mutual trade-off of goals by the participants in a joint venture. This question emanates from the inconvertibility of the ruble and, from the requirement imposed by Soviet law that all outlays of foreign currency made by a joint venture, including the paying out of profits and any other sums accruing to foreign participants and specialists, must be secured by the joint venture as a result of the proceeds derived from the sale of its product on the export market. In addition, joint ventures may sell their product on the Soviet market and receive payment in the form of foreign currency if a demand exists for this product and if the foreign partner returns a portion of its profits in a marketable form by means of purchasing needed goods in the USSR.

Thus, when entering upon negotiations aimed at founding a joint venture within the USSR, the parties involved must decide whether or not a possibility exists for selling a portion of their joint venture's product in a third country in exchange for foreign currency, so that the foreign partner is assured of making a profit. To this end, it is usually sufficient for exports to amount to 10-15% of the venture's total output. If this is not a possibility, the parties must then examine the question of the presence of a demand for their venture's product within the USSR, with this demand being backed by foreign currency, which, of course, could scarcely be regarded as a widespread phenomenon. As a possible variation, the parties may study the advisability of the foreign participant purchasing some sort of goods in the USSR for subsequent resale on the markets of third countries. Such purchases would primarily depend upon the volume in which a specific article is produced in the USSR, the demand for this article in third countries, and, finally, the ability of the Soviet partner to render assistance in acquiring the article in which the joint venture's foreign participant is interested.

By defining their respective goals in a straightforward and open manner, the participants in a joint venture can then more rapidly and more accurately determine the means in which these goals can be achieved, thereby ensuring the success of their well planned business.

2. Labor Laws in the USSR

Many foreign partners in joint ventures labor are under a misconception as concerns the problems associated with Soviet labor laws. Here, the majority of these partners can be divided into two extreme points of view. Some assume that labor laws in the USSR are fraught with paternalism, protecting workers needlessly without affording management the opportunity to deal severely with negligent staff members. Others think that, in general, there are almost no problems at all in this area and that the Soviet partner will handle any such problems should they arise. In our view, the actual state of affairs lies somewhere in between these two viewpoints, leaning, however, more toward the second set of circumstances.

The December 1988 Resolution of the Soviet Council of Ministers constituted an important step toward resolving the questions associated with the labor relation problems faced by a joint venture. This Resolution stipulated that questions of hiring and firing, the form and content of benefits, and the form and content of financial incentives paid to workers in Soviet rubles are to be resolved by the joint venture itself. This means that, when such questions arise, Soviet labor laws will only be brought into play relative to those instances wherein the joint venture, or its agents, make no decision of any kind regarding how a particular problem should be handled.

I would also like to give a brief account of some of the principal tenets of Soviet labor laws. While a number of these laws can now be modified by a joint venture, they are nevertheless of interest from the viewpoint of the approaches that the Soviet participants in joint ventures take to labor problems, as well as from the viewpoint of the extent to which Soviet blue-collar and white-collar workers expect their rights to be protected by these laws, and from the viewpoint of the responsibilities incumbent upon these workers.

Soviet labor laws consist of the **Principles of Labor Laws of the USSR and the Union Republics,** different nationwide labor law acts passed in compliance with these principles, the **Labor Codes,** and the various labor law acts passed by the union republics.

The basic job-related rights of blue-collar and white-collar workers in the USSR are: the right to work—i.e., to secure guaranteed employment at a rate of pay that is commensurate with the quantity and quality of the work performed, and which does not fall below the minimum wage set by the government; the right to rest in compliance with the laws governing the length of the work day and the work week, as well as with those laws providing for annual leave with pay; the right to healthy and safe working conditions; the right to join trade unions; the right to take part in the management of a given enterprise, and; the right to material support by the government in the form of state social insurance in the event of old age, infirmity, and full or partial disability.

The observance of job discipline, regard for the value of the materials used when working, and compliance with the labor norms set by the state in conjunction with the trade unions are the responsibility of all blue-collar and white-collar workers.

Blue-collar and white-collar workers put the right to jobs into action by signing a labor contract to work at an enterprise, establishment, or organization.

In addition, the trade union committee of a given enterprise, on behalf of that enterprise's body of workers, signs a collective agreement with management each year. This agreement must contain basic positions with respect to the questions surrounding work and wages, as well as positions pertaining to work time, rest time, benefits, material and moral incentives, and industrial safety measures, all of which are worked out by the enterprise's management and its trade union committee.

This agreement establishes the shared responsibility of an enterprise's management and its body of blue-collar and white-collar workers for meeting production schedules, perfecting the organization of a given production process and work force, adopting new technologies, enhancing labor productivity, improving product quality, reducing product cost, promoting socialist emulation, reinforcing production and labor discipline, improving the skills and training of personnel directly on the job, involving blue-collar and white-collar workers in the management of the enterprise, perfecting the setting of work quotas, developing forms of benefits, protecting the work force, etc.

The individual labor contract is an agreement struck between an employee and an enterprise whereby the employee pledges to perform work in a given specialty, skill, or capacity in compliance with the enterprise's labor regulations, while the enterprise pledges to pay the employee a wage and to maintain the working conditions stipulated by labor laws, the collective agreement, and any other agreement that the parties may reach.

This labor contract can be terminated in accordance with an established procedure upon agreement by the principals, at the behest of the worker, at the behest of management, or on other grounds stipulated by the law.

A labor contract can be dissolved on the initiative of management in cases stipulated by the labor laws currently in force, for example, if it should be discovered that a blue-collar or white-collar employee is not complying with the duties of the position which he or she holds, or with the standards of the work which he or she performs, due to a lack of skill or a state of health that precludes continuance on a given job; if an employee, without good reason, chronically fails to carry out the duties specified by his or her labor contract; is absent from work; or perpetrates a theft from the workplace, etc. The dissolution of a labor contract on the initiative of management is only permitted when an agreement has been reached beforehand with the enterprise's trade union committee.

All blue-collar and white-collar employees are granted annual leaves while retaining their positions at work and their median incomes, the length of these leaves coming to no less than 15 work days. Certain categories of employees are granted longer leaves.

In accordance with the Constitution of the USSR, blue-collar and white-collar employees are paid for both the quantity and quality of their work. Any sort of reduction whatsoever in the size of work payments due to sex, age, race, or national origin is prohibited.

The monthly pay of a blue-collar or white-collar worker can not fall below the minimum wage set by the government (which is currently 70 rubles).

Any disputes arising between management and labor relative to the fulfillment of the terms of a labor contract by the principals are reviewed by labor arbitration boards, trade union committees, and the people's courts.

A labor arbitration board is set up on the premises of an enterprise, made up of an equal number of trade union committee and management representatives. This board is the body charged with the initial review of labor disputes, with the exception of those disputes falling under the direct purview of the courts. The decisions of a labor arbitration board are viewed as an agreement between an enterprise's trade union committee and its management.

In the event that an agreement can not be reached or that a worker disagrees with the decision of the labor arbitration board, the dispute is reviewed by the trade union committee.

If a worker or the management is not in agreement with the decision of the trade union committee, this dispute can then be reviewed by the court.

Now, a few words on trade unions within joint ventures.

Article 95 of **Principles of Labor Laws of the USSR and the Union Republics** reads: "In accordance with the Constitution of the USSR, blue-collar and white-collar workers are guaranteed the *right* to join trade unions".

Trade unions operate in accordance with the charter that they adopt and are not obliged to register with government bodies. Meanwhile, government bodies, enterprises, establishments, and organizations are obligated to cooperate fully with trade unions as they go about their work.

The Soviet Union ratified Convention No. 87 of the International Labor Organization, entitled "Freedom of Associations and Protection of the Right to Organize", Article 2 of which stipulates that "employees and employers, without any sort of distinction whatsoever, have the right to set up an organization of their own choosing without first obtaining permission to do so, as well as the right to join such organizations on the sole condition that they comply with the charters under which the latter operate".

According to Article 95 if **Principles of Labor Laws,** "trade unions operate in accordance with the charters that they adopt". Paragraph 47 of the **Charter of Trade Unions in the USSR** stipulates that "the question of setting up a local trade union organization is decided by the regional or municipal trade union committee, or if no such committee exists, by the district, territorial, or republic-level trade union committee, or by any other committee with a status equal thereto, as well as by the central committee of the appropriate trade union". According to this, any trade union organization that is established enters into the territorial and field-specific hierarchy of the corresponding trade union; i.e., the trade union to which the Soviet participant in a joint venture belongs.

The question of creating a separate trade union for joint venture workers was raised at a meeting of the Soviet Chamber of Industrial Commerce's Joint Venture Association, held recently in the city of Moscow, however, this is still a matter for future consideration. In concluding this discussion, we note that trade unions are established when no less than five trade union members are present.

3. The Taxation of Joint Ventures in the USSR

The Decree issued by the Presidium of the Supreme Soviet of the USSR on January 13, 1987, entitled "Questions Surrounding the Founding and Functioning of Joint Ventures, International Associations, and International Businesses Involving Combined Participation by Soviet and Foreign Organizations, Firms, and Management Agencies in the USSR", introduced two new types of taxes into existing Soviet tax laws: a tax that is levied on the profits of joint ventures and a tax that is levied on a portion of his profits of a joint venture's foreign partner when these profits are transferred out of the Soviet Union. Lawmakers have made it the singular right of the Soviet Council of Ministers to determine the magnitude of the tax rate and the method of taxation.

The rate at which the profits of joint ventures are taxed comes to 30% of the taxable profits, while the tax levied on a portion of the profits of the foreign partners in joint ventures when these profits are transferred out of the Soviet Union amounts to 20% of the amount transferred.

Since joint ventures founded on Soviet soil are Soviet juridical entities, it is then natural that joint ventures pay their taxes to the State Budget in the form of rubles. A slightly different procedure has been established relative to the tax imposed when profits are transferred out of the Soviet Union. This tax is levied on the amount transferred and is paid in the currency transferred.

Taxable profit is defined as the difference between balance-sheet profits and the allotments paid into the reserve fund, the production development fund, and the science and technology development fund. It is necessary to emphasize that the size of the allotments paid into these funds is not regulated by any codes of practice, but rather is determined exclusively by whatever agreement is struck between the partners in a joint venture. This means that the partners in a joint venture, whenever it is desirable, can reduce their taxable profits to zero over a unspecified period of time without running into trouble with the tax agencies. The sole restriction here applies to the reserve fund and consists of the fact that the ultimate size of this fund can not be any less than 25% of the fixed fund. These funds can only be expended on those items for which they were established. Otherwise, exemption from taxation can not be extended to these funds. The amortization deduction procedure is also regulated in a similar manner. Depending upon production needs, the partners themselves determine what the amortization deductions must be. A joint venture recently registered with the Soviet Ministry of Finance can be cited as an example in this instance. The founding documents of this joint venture stipulated only two rates of amortization deductions: 50% and 100%.

The amount left over after settling up with the State Budget and establishing the aforementioned funds is the distributed profit and can be divided up between the partners as they desire, according to their contributions to the fixed fund. Any portion of the foreign partner's profits that is transferred out of the Soviet Union must be taxed at a rate of 20% of the amount transferred, unless otherwise stipulated by international agreements between the USSR and different countries on questions of taxation. At the present time, the Soviet Union has signed agreements on tax questions with almost all developed capitalist countries; however, a full tax will still be levied when profits are transferred to the United States, Ireland, Iceland, Portugal, and certain other countries. When profits are transferred to the United Kingdom, Finland, and Austria, these profits will be entirely exempt from taxation. However, in order to obtain such an exemption or to reduce the rate of taxation, the foreign participant in a joint venture must submit to Soviet tax agencies a certificate completed by competent authorities in the country of permanent residence, verifying that the end recipient of any dividends is actually a resident of a country with which the Soviet Union has signed a tax agreement.

The codes of practice that govern a joint undertaking within the USSR, particularly the government directive issued on September 17, 1987, establish certain privileges for newly founded joint ventures for the purpose of fostering these new forms of economic cooperation. These privileges include those related to taxation. One of the tax privileges is the exemption of new joint ventures from paying taxes for a period of two years from the time that a declared profit is generated. Since the concept of a "declared profit" did not previously exist in Soviet tax laws, it falls upon the Soviet Ministry of Finance to make a determination, using the definition contained in its own instructions, as to whether the profit reflected in a joint venture's yearly balance sheet is declared or not. Since a joint venture's balance sheet is prepared as of January 1st of the year following the current year, it would then seem that this two-year exemption becomes almost a three-year exemption. In addition, it is necessary to emphasize that this two-year exemption from paying taxes only extends to the joint venture itself and does not affect the 20% tax on dividends. Thus, when transferring profits out of the USSR to the country of residence, the foreign partner must bear in mind that the 20% tax will remain in place.

The December resolution of the Soviet Council of Ministers substantially augmented the inventory of tax privileges. In this vein, joint ventures in the Far Eastern economic region are exempted from paying taxes on their profits for the first three years from the time that a declared profit is generated. At the same time, the tax levied on the profits of joint ventures in this region is reduced to 10%.

This resolution assigns the Soviet Ministry of Finance the right either not to impose a tax on that portion of a joint venture's profits accruing to the foreign partner for a certain length of time when these profits are transferred abroad, or to reduce the amount of the aforementioned tax unless otherwise stipulated by an agreement between the USSR and the corresponding nation. This right is primarily exercised when a joint venture is producing goods for Soviet consumption, medical equipment or drugs, or products with scientific applications, as well as with respect to joint ventures that are situated in the Far Eastern economic region.

When discussing questions of taxation, legal means for reducing the tax burden or doing away with it altogether always arouse the highest level of interest. In concluding my report, I will talk about one such possibility.

With respect to the tax imposed on transferred profits, one feature of the laws governing joint ventures is the fact that this tax cannot be levied when these profits are transferred abroad in the form of goods. Thus, in a number of instances, an interested foreign partner, using the rubles or other currency due him from his share of a joint venture's profits, and consulting a preapproved list of available articles, can acquire certain goods within the USSR and can transfer these goods abroad without paying any tax.

THE LAW ON THE STATE ENTERPRISE ASSOCIATION

By
V. A. Kuvshinov
Deputy Chief of the Main Contracts and Legal Directorate,
Ministry of External Economic Relations of the USSR

1. Reasons for Promulgating the Law

A profound restructuring in the economy necessitated the promulgation of this law. Thus far, the development of productive forces in the country has been based extensively on methods and principles of rigid central planning. These methods and principles have come into conflict with the level of development of productive forces, the need to solve the tasks of scientific-technical progress and the need to carry out social programs.

There is a need for new methods associated with the intensification labor, i.e., securing an increment in national income mainly by virtue of increased labor productivity. There is a need for new principles of planning based on economic norms. These needs can only be satisfied by reinforcing the economic autonomy of an enterprise, through its operations within the framework of self-management, self-repayment (i.e., its profits exceeding its outlays) and self-financing (i.e., expanding production by using its own resources). In this way, the enterprise becomes the main element in the national economy.

2. Legal Status of the Enterprise and Principles of Its Operations

Pursuant to Article 1 of the Law, the enterprise is a corporate person that enjoys the rights, and discharges the responsibilities associated with its operations; possesses a separate segment of all people's property; and draws its own balance sheet.

According to Soviet legislation and, in particular, the Basic Civil Regulations, the following are characteristics of the status of a corporate person.

The enterprise has a charter setting forth the goals of its operations which is endorsed by its superior agency. The enterprise becomes a corporate person on the day the charter is endorsed.

A corporate person may, on its own behalf, acquire proprietary and personal (non-proprietary) rights, assume obligations, and be a plaintiff or a defendant in court or arbitration proceedings. A corporate person operates on the basis of a charter. A corporate person has specific legal capacity which is in line with the goal of its operations. Assets which may be subject to forfeiture by Soviet law belonging (assigned) to a corporate person are collateral for its obligations (i.e., assets except building, structures, equipment and other assets classified as basic assets, as well as working capital necessary for regular operations). The State is not responsible for the obligations of state enterprises which are corporate persons, nor are corporate persons responsible for the obligations of the State.

The new principle of planning enterprise operations states that the enterprises adopt their plans independently, proceeding from control statistics, state orders, long-range economic norms and quotas prepared by planning agencies.

The principle of full economic accountability states that production outlays and remunerations are paid out of the proceeds generated. Profit (or income) is the overall indicator of an enterprise's commercial operations. Some of the profit is allocated to meet obligations to the state budget, banks and the superior agency (ministry). The remainder stays completely at the disposal of the enterprise.

Two forms of economic accountability are possible. In the first form, the profit is allocated according to a formula for settlements with the budget and the superior agency to pay interest on loans and accumulate various proprietary funds for economic development and incentives. The wage fund is thus determined as a set share of "net" product or other production statistics, and income consists of the wage fund and residual profit.

In the second form, income—less expenditures, contributions to the budget and the superior agency, interest payments, and formation of proprietary production development and social funds, is distributed according to a formula. This residual represents a particularly unified fund for remunerations.

The principle of self-management states that the enterprise workforce is the actual master of the enterprise and is affected by all achievements and losses in its operations.

The enterprise carries out its economic operations in accordance with socialist legislation. It signs and executes contracts with various organizations acting in the capacity of corporate persons. According to the Basic Civil Regulations, contracts may be bilateral or multilateral; contracts not complying with the demands of the law are void. A failure to comply with the form required voids the contract only if this consequence is directly stipulated in the law. For example, pursuant to Article 125 of the Basic Regulations, a failure to comply with the form of foreign trade agreements and the procedure for signing them voids the agreements. If the agreement is void, restitution occurs; a return of everything received through the agreement by each of the sides to the otherside, and, if the return of tangibles is impossible monetary reimbursement for the value, unless the law provides otherwise.

If an agreement was signed with a purpose deliberately adverse to the interests of the socialist state and society, then, if premeditation existed on both sides, and if the agreement has been carried out by both parties, everything obtained by them by virtue of the agreement is subject to seizure by the State Treasury. In the event the agreement was executed by one party, the other party forfeits to the State Treasury everything that it has received and everything due to the first party for the value received. If premeditation by only one party is the case, everything it has received from the other party by virtue of the agreement should be returned, and of what the latter receives, only what is due as reimbursement for the execution is forfeited to the State Treasury.

Sales and purchase contracts, supply contracts, proprietary rental contracts, service (other than capital construction) contracts, shipping contracts and many others are among contracts regulated by law.

Enterprises are entitled to make any decisions on their own initiative as long as they do not contradict the legislation in effect. Enterprise operations may not disrupt normal working conditions for other enterprises or worsen the conditions of life of the populace.

Fixed assets and working capital, as well as other material valuables and financial resources constitute the material—technical base and assets of the enterprise. An enterprise exercises the right to own, use and administer these assets.

Fixed assets and working capital assigned to the enterprise constitute its statutory fund. Fixed assets are characterized by being used over several economic periods (i.e., longer than one year), while preserving their tangible form. Working capital is used entirely within one cycle, and its value is included in full in the cost of production. Fixed assets consist of buildings, structures, equipment and some kinds of property. Raw and other materials, semi-finished goods, as well as finished products and a segment of financial resources allocated for operational needs are classified as working capital. Usually, fixed assets and working capital are interpreted to mean a monetary valuation of property rather than property itself.

The enterprise's working capital is completely at the disposal of the enterprise and is not subject to forfeiture. It is replenished from the enterprise's own resources and the enterprise is interested in increasing the velocity of circulation of this capital. As far as the fixed assets are concerned, at present an enterprise is entitled to transfer to other enterprises, sell, swap, rent out, give free temporary use of, or lend buildings, structures, equipment, means of transportation and other property. The enterprise may also transfer material and financial resources to other enterprises performing work or rendering services to it.

The application of the Law on the State Enterprise has boosted the interest of enterprises in high final results of commercial operations and the rational use of the economic incentive fund. Consequently, practical activities have taken the path of issuing shares on the initiative of enterprises (with the consent of an office of the State Bank of the USSR). Two kinds of shares are issued: a) workforce shares, sold only to members of one's own workforce; b) enterprise shares, sold to other enterprises, organizations and cooperatives. Dividends on shares of the first kind are paid for by the financial incentive fund or the remuneration fund of the enterprise. Dividends on shares of the second kind are paid for by the fund for developing production, science and technology. Acquisitions of shares of the second kind are also paid for by the fund for developing production, science and technology. It must be noted that the issue of shares is merely a form of marshalling financial resources, and it does not change the legal status of an enterprise, i.e., the latter does not become a joint stock company. Fixed assets of the enterprise are not split into shares and do not constitute stock capital. Also absent is the personal right of any shareholder to take part in general shareholder meetings to resolve the most important issues of operations by a joint stock company as provided in the legislation of Western countries. These issues will probably be regulated by the Law on Joint Stock Companies to be prepared in the immediate future.

3. Enterprise (Association) Management

Autonomous enterprises and various kinds of associations operate in various sectors of the economy, taking into account the peculiarities of economic operations.

Several autonomous enterprises regardless of their venue belong to an association. The latter operates as a unified production and management complex on the basis of a unified plan and balance sheet. A production association and a scientific—production association are the main varieties of associations.

A scientific-production association is created to develop and implement new types of production and technologies. It consists of R&D, drafting and design and technology organizations, as well as industrial enterprises.

Production and scientific-production associations are corporate persons. By a decision of the association, its structural divisions may have separate balance sheets and bank accounts, as well as the capacity to sign contracts in their name and have their assigned property as collateral. However, if such property is insufficient, the association is responsible for the obligations.

Enterprise self-management means participation by the entire workforce in preparing the most significant economic decisions and controlling their execution, as well as in the elections of managers. Elections of enterprise managers and those within structural divisions are, as a rule, by competitive application. Managers are elected for 5 years by an open or secret vote of the general meeting of the workforce (at the discretion of the meeting), and are endorsed by the superior agency. If the candidate is not endorsed, new elections are held and an explanation of reasons for withholding endorsement is given to the workforce. An early recall by the superior agency based on a decision of the workforce meeting is possible. Managers of legal and accounting services and of quality control service are appointed and relieved only in coordination with the superior agency.

The enterprise manager operates on the principle of one-man management and is responsible for the results of his activities. The enterprise manager acts on behalf of the enterprise (without power of attorney), represents it, manages enterprise property, signs contracts, grants power of attorney and opens bank accounts. However, he signs foreign trade contracts together with another individual whom he so empowers by power of attorney, because the presence of two signatures is considered by Soviet legislation to be a condition of validity of a foreign trade contract.

The workforce has been given an important role in the economic life of an enterprise. The workforce exercises its power mainly through the general meeting. Specifically, the meeting elects the manager of the enterprise and the workforce council, endorses enterprise plans and approves a collective bargain with the administration. Meetings are held when necessary, but no fewer than two times a year. Between the meetings, the powers of the workforce are exercised by the workforce council, which considers production and social issues unless these issues fall within the jurisdiction of the general workforce meeting. The council is elected for 2 to 3 years by a secret or open vote at the workforce meeting. The number of people on the council is determined at the meeting. Management on the council may account for no more than one-fourth of the total number of council members. The council meets at least once every 3 months. A member of the council cannot be fired or disciplined without the council's consent. Decisions by the council, made within the confines of its powers and in keeping with the law, are binding on the enterprise management and the workforce. In the event the management disagrees with a decision of the council, the issue is resolved at a general meeting of the workforce.

4. Relations Between the Enterprise and Superior Agencies

The enterprise is managed primarily by economic methods. Its superior agency (i.e., typically the branch ministry) must create conditions for efficient operations by the enterprise, respect its rights, and refrain from interfering in its current economic operations. The ministry or another superior agency can give instructions to the enterprise only in keeping with its authority as set forth in the law. If such an instruction fails to comply with the authority of the agency or the law, the enterprise is entitled to petition state arbitrators to have this instruction invalidated in part or in full. The superior agency also must make up the loss suffered by the enterprise as a consequence of the instruction which violated its rights, or due to the failure of the superior agency to duly discharge its responsibilities to the enterprise. Disputes over such losses are considered by GOSARBITRAZH.

5. Planning Enterprise Operations

A five-year plan of economic and social development (with assignments for individual years) is the main form of planning and organizing enterprise operations. Control statistics, State orders, long-range economic norms and quotas, as well as direct orders from consumers of products are the foundation for preparing the plan. Control statistics are not in the nature of a directive, they are for orientation. They show the need of society for the product turned out by the enterprise. Long-range economic norms (stable within five-year periods) are: the norm of deductions to the state budget, norms of contributions to the wage fund and economic incentive fund, and other norms. Quotas are the limits on the volume of centrally allocated resources for production and construction.

State orders are mandatory, and must be included in the plan. There must be a rational relationship between the volume of state orders and the overall volume of production because State orders should be restricted to the most important kinds of production, work performed or services rendered, i.e., those necessary to solve tasks of national significance; to implement structural economic policy (priority for the development of particular economic sectors); to carry out R&D programs; and to maintain the defense capability and economic independence of the country. At present, the overall economic policy is geared towards reducing the share of state orders and increasing the share of products for which the enterprise signs direct contracts with consumers on its own.

6. Supplies and Sales. Financing and Prices Credit and Settlements

The enterprise meets its needs for material resources through wholesale or centralized allocation of products. Wholesale represents unrestricted acquisition of necessary materials, parts, etc. This form of supply is developing, and, according to the law, should become the dominant form. The enterprise is allocated certain material resources within consumption quotas (allotments) in a centralized manner. Currently, the volume of centrally allocated products is still high. Supplies are provided on the basis of contracts directly with the producer enterprise or with a supply and sales enterprise.

Sales of products manufactured are also carried out on the basis of contracts with customer enterprises, trade enterprises and supply and sales enterprises, as well as through the enterprise's own sales network. The legal principle of actual execution is the basis for fulfilling contractual obligations, i.e, the payment of fines, forfeits and indemnification for losses do not relieve the enterprise of fulfilling the obligation to deliver products, perform work, or render services.

A delivery contract regulated by Soviet civil law is the main kind of contract between the organizations involved. According to this contract, the supplier organization undertakes, before a certain deadline (or deadlines), to transfer goods to the possession of the purchaser organization (e.g., a cooperative) or into its operational control (e.g., to another state enterprise). The purchaser organization undertakes to accept the goods and pay for them at the prices set. Delivery contracts are either based on state orders and consumption quotas or signed at the discretion of the parties. As a rule, the time the contract is signed does not coincide with the time the delivery is made. From the legal standpoint, the subject matter of the delivery contract—products—is divided into two types: producer and technological goods, and consumer goods. The delivery contract is governed by two separate regulations adopted by the government of the USSR. The assortment (enumeration of products by makes, grades, models, etc.) and quality of products supplied must be specified in the contract or the contract is considered invalid.

Work is performed on the basis of a work contract, according to which a contractor undertakes to carry out, at his own risk, certain work as assigned by the customer with materials provided by either party. The customer undertakes to accept the work performed and pay for it. Rendering services may fall within the scope of work contracts, or it may be regulated by special kinds of contracts (state insurance, transportation, storage, etc.).

Financial operations are performed by enterprises in keeping with their five-year and annual plans. An enterprise is responsible for timely payments to the budget, banks, the superior agency, suppliers, contractors and other organizations. Norms are set for deducting payments to the State and local budgets, payments for production assets, payments for labor resources, and payments for natural resources (differential rent) from the profit (income). Along with the payments to the budget for resources, taxes are levied on the profit (income) of the enterprise left after making payments for resources and paying interest on loans. Fines and forfeit payments and loss indemnification are charged also against enterprise profit. Fines, forfeits and loss indemnification paid to the enterprise are added to its income.

The enterprise sells its products (work, services) at prices set in a centralized manner (by the USSR State Committee for Prices, as well as relevant ministries and departments), or by agreement with the customer, or independently.

The enterprise has a right, by agreement with the customer, to set surcharges to or reductions from the centrally set prices, depending on the performance properties and accessories for products. Prices for custom-made and special-order goods and new types of merchandise are also set by agreement with the customer. The enterprise independently sets prices for goods that are distributed through its own retail outlets or self-consumed.

The enterprise uses bank credit for production and social purposes. The law does not provide for commercial loans made by one enterprise to another. Bank loans are provided on the following

---

NOTE: at present, operational control means enjoying the right to own, use and administer.

basis: loans are secured, loans are provided for a specific purpose and a specific term; loans are repayable, and they come at a price. If an enterprise consistently violates the terms of credit repayment, it forfeits the right to new loans. In certain cases, the bank demands a guarantee by the superior agency.* The priority of payments in the case of insolvency is determined by the bank. In this case, the suppliers and contractors may suspend deliveries, work and services. The banks pay interest to the enterprise for using the spare moneys from enterprise funds.

7. External Economic Operations

External economic operations are an integral part of enterprise operations in their entirety. They proceed along the line of hard currency profitability and self-financing. The results of such operations are reflected in the overall results of enterprise operations.

It is expected that in 1989, all enterprises with products which are competitive in foreign markets will be given the right to enter the foreign market directly, carry out export and import operations, and, when necessary, set up foreign trade companies.

With some exceptions, any goods may be exported. Raw and other materials, accessories, machinery, equipment, services and other goods necessary for technological retooling, reconstruction and expansion of production, protection of the natural environment, performing R&D and other work may, also with some exceptions be imported. Goods to meet the needs of the workforce (consumer goods, medical supplies, goods meeting social and cultural needs) may also be imported.

An enterprise's proprietary hard currency fund accumulated on the basis of stable long-range norms is created from the hard currency proceeds it receives from selling exported products and services to foreign companies. The goods the enterprise needs are imported at the expense of this hard-currency fund. In this case, the State is not responsible for the obligations of the enterprise.

The enterprise may secure a bank loan in the currency in which imports are denominated, with repayment to be made from hard currency proceeds from exports. The enterprise may use the brokerage of specialized external economic organizations on a contractual basis.

Let us consider in brief the legal nature of contracts between enterprises and external economic organizations, foreign trade associations or (FTO's). In export operations, the brokerage contract and the delivery contract are the main types of contracts.

Under a brokerage contract, an FTO operates in a foreign market under its own name, however, the FTO operates as an agent for and on the account of the commissioning enterprise which delivers the goods for export and owns its own hard-currency fund. This type of contract is preferable for enterprises, manufacturers of highly upgraded exportables, especially machinery and equipment. This contract is based on providing a broker's service. It is exactly through such contracts that the enterprise may set the best conditions for exports, whereas the external economic organization operates as a broker on commission; acting in the interest and on behalf of the enterprise.

A delivery contract is patterned after a sales contract. The enterprise sells the merchandise outright to the FTO. The FTO solves the problems of exporting the merchandise on its own (rather than as a broker), with proceeds of such sales going into the centralized State hard currency fund. This type of contract is preferred by enterprises which do not accumulate their own hard currency fund (e.g., enterprises producing raw materials and fuels, such as oil, gas, ores, etc., for exports). By virtue of delivery contracts, FTO's receive deductions in the form of rebates on selling prices of the USSR.

Brokerage contracts are used for import operations. Their main features are the same as those used for exports.

Agency contracts under which the FTO operates in the foreign market in the name of the enterprise, on its account and behalf, may also be used in both imports and exports. The obligations incurred through this contract are directly between the enterprise and the ultimate purchaser of the goods.

Along with purely commercial operations of selling and purchasing, the enterprise may engage in production and scientific-technical cooperation with the companies of Western countries (coordinated development, production and sales of products). With the consent of its superior agency, the enterprise may set up joint enterprises on the territory of the USSR, as well as abroad, in the fields of science, technology, trade, finance, services, tourism, advertising, joint R&D, design, engineering, and others. The enterprise may also purchase shares, bonds and other securities, issue and float them.

---

* If the payments regimen is consistently violated, the bank may declare the enterprise insolvent and notify the suppliers and the superior agency of the insolvency.

8. Records, Reporting and Auditing

The enterprise maintains book-keeping and statistical records of its operations. Reporting requirements, addresses and deadlines for filing reports are established by relevant administrative agencies. Supplying other reports is forbidden as being a manifestation of bureaucratic management methods. Auditing and inspection of operations may be performed by superior agencies, banking and finance organizations, and agencies of the people's inspectorate.

9. Labor and Wages

Labor relations are regulated by special labor regulations, in particular, the Basic Regulations of the USSR and of constituent republics on labor, the Law of the USSR on Workforces and on Increasing Their Role in Managing Production, Offices and Organizations.

The Law on the State Enterprise laid down a number of fundamental statements on labor relations:

Wages depend on the final result of work and no upper limit is imposed on them;

The enterprise sets labor norms and forms of organizing work, performs certification and streamlining of work stations, establishes the regimen of work and recreation time, maintains labor discipline, accumulates the wage fund in keeping with the norm in effect, determines the total strength of the workforce and its composition, adopts staff charts and resolves a number of issues in remuneration and labor incentives;

Labor organization and remuneration, social measures, and control of remuneration are handled by the enterprise jointly or in coordination with the trade union committee.

10. Setting Up an Enterprise and Discontinuing Its Operations

An analysis of Soviet legislation, which envisages three modes of creating corporate persons (executive, by authorization, and normative without prior permission) may suggest that a state enterprise, production or production-scientific association is established by virtue of an executive act of a relevant State administration agency (e.g., a relevant branch ministry).

Several forms of reorganizing the enterprise are possible:

merger—of one enterprise into two or several new ones;

spin off—the original enterprise remains, and a new one begins operations;

absorbtion—one enterprise continues to operate under its name after absorbing another one; and

transformation—one enterprise begins to operate under a new name and with new responsibilities.

Enterprise operations are reorganized or discontinued by a decision of the agency which is entitled to set up corresponding enterprises.

11. Specifics of Applying the Law on the State Enterprise

The specifics of applying the Law on the State Enterprise in particular sectors of the national economy and with regard to particular types of enterprises are set forth by the Council of Ministers of the USSR. For example, the application of this law to All-Union FTOs in conjunction with them switching to full economic accountability, will be regulated.

THE CONSEQUENCES OF DECLARING A FOREIGN TRADE DEAL INVALID UNDER SOVIET LAW

By
V. A. Ostrovskiy
Chief of the Legal Department, Soyuznefteeksport VVO
(All-Union Foreign Economic Association)

In rare instances, a foreign trade deal concluded by one of the All-Union Foreign Economic Associations of the USSR (previously named the All-Union Cost Accounting Foreign Trade Associations) later declared invalid. The most widespread reason for declaring a foreign trade deal invalid under Soviet law is the failure of one or both parties concluding the deal to observe the form of its completion and signing procedure prescribed by law. As a rule, the invalidity of a foreign trade deal is established by a court or foreign trade arbitration, to which the parties, or one of the parties, sends the disputed issue for examination.

By virtue of the norms of Article 125 of the Foundations of Civil Law of the USSR and the Union Republics, and of Article 565 of the RSFSR Civil Code, the form of foreign trade deals carried out by Soviet organizations, and the procedure for their signing, regardless of the place that these deals are accomplished, are determined by USSR legislation.

Before 1978, the procedure for accomplishing foreign trade deals by Soviet organizations was determined by the resolution of the USSR Central Executive Committee and Council of People's Commissars of 26 December, 1935. Paragraph 2 of this resolution stipulated that: "Foreign trade deals concluded by all-union foreign trade associations in Moscow must be signed by two persons, one of whom is the chairman of the association or his deputy, and the other, a person authorized to sign foreign trade deals by a power of attorney signed by the association chairman... If it is necessary for the indicated associations to conclude foreign trade deals... outside of Moscow (both on USSR territory and abroad)... the aforesaid deals... shall be signed by two persons who have received a power of attorney signed by the association chairman." Such persons did not receive the right to sign until their names were published in the official organ of the People's Commissariat of Foreign Trade, later the Ministry of Foreign Trade, the journal VNESHNYAYA TORGOVLYA [Foreign Trade].

This unwieldy and complex procedure for signing foreign trade deals existed until March 1978. In February 1978, the USSR Council of Ministers approved a resolution that established that foreign trade deals concluded by Soviet organizations authorized to carry on foreign trade operations shall be signed by two persons. The manager and his deputies in the indicated organization, as well as persons authorized by powers of attorney, signed by the organization manager alone, unless the charter of the organization provides otherwise, have the authority to sign such deals. The names of persons authorized by their positions to sign foreign trade deals are published in the organ of the Ministry of Foreign Trade, or in the organ of the ministry, state committee or department in the system of which the corresponding organization is found.

The new procedure for signing foreign trade deals took effect on 1 March, 1978. It did not extend to obligations pertaining to operations of USSR Gosbank [State Bank], USSR Vneshtorgbank [Foreign Trade Bank], or to foreign insurance. Publication of the names of persons whose positions authorize them to sign foreign trade deals does not now amount to authorization. It serves only to inform possible contractors of the association that the persons indicated in the publication occupy the corresponding duties in the association and have the authority to sign foreign trade deals.

Pursuant to Chapter 4, Article 14 of the Foundations of Civil Legislation of the USSR and the Union Republics, and to Chapter 2, Article 45 of the RSFSR Civil Code, non-observance of the form of foreign trade deals and of the procedure for their signing invalidates the deals. Since no other norms, except for the norms of Soviet law, can be taken into account, according to the meaning of Article 125 of the Foundations of Civil Legislation of the USSR and the Union Republics, and Article 565 of the RSFSR Civil Code, in determining the procedure for signing foreign trade deals by Soviet organizations, it can be concluded that in deciding the question of the validity of foreign trade deals made initially in violation of the established procedure, it is necessary to be guided by the norms of Soviet legislation.

Article 63 of the RSFSR Civil Code, which defines the consequences of concluding a deal by an individual not so authorized, or who has exceeded his authority, states: "A deal made in the name of another person by a person not authorized to make the deal, or who has exceeded his authority, creates, changes or suspends civil rights and obligations for the represented individual only in the case of subsequent approval of this deal by the represented individual. Subsequent approval by the represented individual makes the deal effective from the moment it was concluded.

The content of Article 63 of the RSFSR Civil Code does not contradict Chapter 2, Article 45 of the RSFSR Civil Code, which pertains to the invalidity of a foreign trade deal due to flaws in the form or procedure of its signing. These two articles of the RSFSR Civil Code should be viewed as interconnected. It does not follow from Chapter 2, Article 45 of the RSFSR Civil Code that flaws committed in concluding a foreign trade deal cannot subsequently be eliminated by appropriate sanctioning by the Soviet foreign trade organization. Such sanctioning is permitted by Article 63 of the RSFSR Civil Code, which also relates to foreign trade deals with foreign contractors. The Commentary on Article 63, RSFSR Civil Code, under the editorship of professors S.N. Bratus and O.N. Sadikov (Moscow, 1982, p.93) states that such approval should follow within the normally necessary period of time. This opinion is also supported in Soviet legal literature[1] as well as by arbitration practice.[2]

Declaring a foreign trade deal invalid based on Article 45 of the RSFSR Civil Code, as well as Article 14 of the Foundations of Civil Legislation of the USSR and the Union Republics, does not define the consequences of such invalidity. As is noted in the above-mentioned Commentary to the RSFSR Civil Code, page 73, "the consequences of the invalidity of a foreign trade deal are not set forth in Article 45 and shall be determined in accordance with the general rules of Article 48 of the RSFSR Civil Code." This conclusion has been unanimously supported by Soviet jurists.

Part 2, Article 48 of the RSFSR Civil Code provides that, in the case of an invalid deal, each of the parties must return to the other party everything obtained pursuant to the deal, and if it is not possible to return it in kind, its monetary value must be reimbursed. The cited articles of the law do not anticipate the obligation to reimburse loses that may be suffered by the parties, or by one of the parties, as a result of the very fact of the invalidity of the deal (Commentaries to the RSFSR Civil Code, Moscow, 1982, p. 76).

Article 473 of the RSFSR Civil Code regulates questions associated with the obligation to return property unjustifiably acquired or saved. Pursuant to Chapter 2, Article 473 of the RSFSR Civil Code: "Such an obligation arises if the basis under which the property has been acquired later disappeared;" i.e., if the foreign trade deal was later declared invalid. This same article of the RSFSR Civil Code provides that a person who obtained property itself, either in kind or according to its value determined at the moment of the unlawful acquisition of the property, but also is obligated to return or reimburse all income that he derived or should have derived from this property from the time that he learned, or should have learned, that the property was unjustifiably obtained.

Article 48 of the RSFSR Civil Code is directly associated with Article 473 of the RSFSR Civil Code. Therefore, on questions not directly regulated in Article 48, one is to be guided by the provisions of Article 473, in particular, on the issue of reimbursement of unjustifiably obtained income. The link between these two articles is seen by comparing Article 48 and Chapters 1 and 3 of Article 473. This understanding of the interrelationship between these two articles is supported in Soviet legal doctrine.

A monograph by Professor Rabinovich, "Nedeystvitel' nost' sdelok i ee posledstviya" [The Invalidity of Deals and Its Consequences] (Leningrad, 1960, pp 113- 4), notes: "Declaring a deal invalid means not only depriving it of force for the future, equally to both worthless and questionable deals declared invalid by a court. The retroactive effect of a court decision means that everything acquired by each of the parties in the deal is deprived of legal basis. Therefore, it is always subject to confiscation from the recipient. The difference between individual groups of invalid deals can be found only in the different destinies of the confiscated property, as well as in the procedure for carrying out its confiscation (based on a property suit of vindication, or on a mandatory legal requirement to give over so-called unjustified enrichment)."

Further, on page 116 Professor Rabinovich continues: "... requirements associated with the invalidity of deals that have already been executed cannot be limited by declaring the deal invalid (it is precisely declaration of invalidity that constitutes the specific nature of suits directed at canceling the deal, regardless of whether or not they have been executed); the confiscation of improperly obtained goods associated with this is possible only through a suit of vindication or a suit of unjustified enrichment."

---

[1] (Professor V. S. Pozdnyakov, "Pravovoye polozheniye vsesoyuznykh vneshnetorgovykh ob"edineniy i drugikh organizatsiy, upravomochennykh na soversheniye vneshnetorgovykh sdelok. Predstavitel'stvo. Doverennost'" [The Legal Status of All-Union Foreign Trade Associations and Other Organizations Authorized to Conclude Foreign Trade Deals. Representation. Power of Attorney.], Moscow, 1978, VAVT [All-Union Foreign Trade Academy] publishers, p. 29, and Professor D. F. Ramzaytsev, "Sbornik informatsionnykh materialov VTP. Sektsiya prava" [Collection of All-Union Chamber of Commerce Information Materials. Legal Section.], No. 23, 1970, pp. 5-6.

[2] (Decision of VTAK pri TPP SSSR [Foreign Trade Arbitration Commission at the USSR Chamber of Commerce and Industry] on suit of Soyuznefteeksport All-Union Association against the Italian joint stock company A. Moroni and K. Keller (Arbitration Practice Collection, Part 3, 1972, pp 41-42)).

Professor Fleyshits maintains a similar position in his work, "Obyazatelstva iz prichineniya vreda i iz neosnovatelnogo obogoashcheniya" [Obligations Arising from Causing Harm and From Unjustified Enrichment] (Moscow, 1959, page 223, paragraph 4). He writes: "Execution on a worthless or, as it is otherwise called, an absolutely invalid deal: The court or arbitration does not abolish such a deal, but only states the fact of its invalidity, and has the responsibility to make such a statement, regardless of the demands of the parties. Such a deal is not in effect for any single moment after its completion. Consequently, everything executed according to such a deal has been executed without sufficient basis. Such execution constitutes unjustified enrichment of the party to the benefit of which it has been carried out, and is to be returned to the other party." Professor V.P. Shakhmatov, in his work, "Sostavy protivopravnykh sdelok i obuslovlennyye imi posledstviya" [The Facts of Unlawful Deals and Their Consequences] (Tomsk University publishers, 1967), writes on page 246: "When the invalidity of deals applies, the unjustified acquisition of property is always the consuquence of the absence or falling away of its acquisition. The basis for the acquisition of property is absent in the execution of worthless, and especially unlawful deals." Further, on page 250 he notes: "A person who, without sufficient basis, acquired or saved property at the expense of another is obligated to return to the latter the unjustifiably acquired or saved property. The same rule is also affirmed on page 48 of the RSFSR Civil Code."

The cited opinions by Soviet jurists support the conclusion that an executed invalid deal creates the prerequisite for a suit based on unjustified enrichment. Part 2 of Article 48 of the RSFSR Civil Code gives grounds for an accusation or a vindication suit in the case of a successful demand for individually defined things, or of a suit on grounds of unjustified enrichment, when the matter concerns a successful demand for things defined by their generic attributes. Such an approach is affirmed in the Commentary to Article 473 of the RSFSR Civil Code, under the editorship of Professor S.N. Bratus and Professor O. N. Sadikov (Moscow, 1982).

The interrelationship of Articles 48 and 473 of the RSFSR Civil Code, as they apply to an executed invalid deal, permit the conclusion that, since the question of the income of a person, and of unjustifiably obtained and used property, is not directly regulated in Article 48 of the RSFSR Civil Code, it is appropriate to be guided by Part 5 of Article 473, RSFSR Civil Code, which was cited above.

LEGAL STATUS OF SOVIET ORGANIZATIONS SUBJECTS OF EXPORT AND IMPORT OPERATIONS

By
Professor V. S. Pozdnyakov
Head of Legal Discipline Department
All-Union Academy of Foreign Trade

1. The System of Soviet Organizations Involved in Export and Import Operations

A marked decentralization of the present day mechanism of external economic operations in the USSR necessitated by the economic reform underway in the country, is a characteristic feature of this mechanism at the level of organizations involved in export and import operations.

This process was initiated in late 1986, at a time when export and import operations were primarily performed by organizations subordinated to the Ministry of Foreign Trade of the USSR (MVT) and the State Committee of the USSR for External Economic Relations (GKES). On 19 August 1986, two resolutions intended to fundamentally streamline external economic relations were passed by the Central Committee of the CPSU and the USSR Council of Ministers. The first one (No. 991) was "On Measures to Streamline the Management of External Economic Relations." The second (No. 992) was "On Measures to Streamline the Management of Economic and Scientific-Technical Co-operation with Socialist Countries".[1] Under these resolutions, it was considered expedient to set up, effective 1 January, 1987:

a) foreign trade organizations operating under economic accountability in more than 20 ministries and other departments based on their divisions, and FTOs [Foreign Trade Organizations] reporting to the Ministry of Foreign Trade;

b) foreign trade companies operating under economic accountability within 70 scientific-production and production associations, enterprises and organizations, which have conditions for considerable export deliveries of high-quality products.

They also resolved to develop work on a broad scale to vigorously draw into the sphere of external economic relations, associations, enterprises, and organizations having realistic potential for developing cooperation in production with the associations, enterprises, and organizations of other countries members of the CEMA [Council for Economic Mutual Assistance]. The former were granted the right to establish direct production and scientific-technical contacts with the corresponding organizations in other countries of the socialist commonwealth. In late December 1986, the Councils of Ministers of constituent republics were allowed to set up republic-level foreign trade associations, based on the principle of economic accountability, to perform export and import operations for enterprises and organizations which were reporting to the ministries of republics and other departments at the local level.[2] In addition, measures were taken in order to develop direct external contacts by enterprises and organizations who previously dealt only in domestic retail trade. In addition, consumer cooperatives reporting to the Ministry to Trade of the USSR and Central Union [of Consumer Cooperatives] of the USSR and were covered by these new measures. On 17 September 1987, the CPSU Central Committee and the Council of Ministers of the USSR adopted resolution No. 1,047 "On Additional Measures for Streamlining External Economic Operations under the New Conditions of Management".[3] By a Decree dated 15 January 1988, the Presidium of the Supreme Soviet of the USSR resolved to create the all-Union Ministry of External Economic Relations, while eliminating the Ministry of Foreign Trade and the State Committee of the USSR for Foreign Economic Relations.[4]

The rights given to State and cooperative organizations in the sphere of external economic operations were reflected in two laws passed in 1987 and 1988: the Law of the USSR "On the State Enterprise" (Association) dated 30 June, 1987[5] and the Law "On Cooperatives in the USSR" dated 26 May 1988.[6]

---

[1] SP SSSR, 1986, No. 33, article 172

[2] SP SSr, 1986, No. 6, article 24

[3] Vneshnyaya torgovlya, 1987, No. 11

[4] Vedomosti Verkhovnogo Soveta SSr, 1988, No.3, item 43

[5] Vedomosti Verkhovnogo Soveta SSSR, 1987, No. 26, item 385

[6] Vedomosti Verkhovnogo Soveta SSSR, 1988, No. 22, item 355

Article 19 of the Law on the State Enterprise (Association) states:

"1. Foreign economic operations by an enterprise are an important component of its entire work. They are carried out, as a rule, on the basis of foreign currency self-capitalization and self-financing, and its results are an organic part of the results of the enterprise's economic operations and directly affect the formation of economic incentive and foreign currency allowance funds.

The enterprise ensures export deliveries of products as a matter of priority.

2. Cooperation with enterprises in socialist countries, the expansion and deepening of socialist economic integration, and development of effective cooperation in production are of priority importance in enterprises' foreign economic operations.

In relations with enterprises and organizations of CEMA [Council for Economic Mutual Assistance] member countries enterprises:

establish direct links, solve questions of production, scientific, and technical cooperation in production, including definition of the economic terms of cooperation, including contract prices, and conclude economic agreements and contracts;

coordinate the assortment and volumes of exports and imports of goods produced in cooperation and the provision of services, and transfer material resources and the relevant technical documents;

carry out scientific research, design, and experimental work, create joint collectives of scientists and specialists for these purposes, exchange scientific and technical documentation on mutually agreed terms, and provide assistance in cadre training;

participate in the operation of joint enterprises, international associations, and organizations set up on the basis of international agreements by the USSR.

3. Enterprises implement their economic ties with firms in the capitalist and developing countries on the basis of the principles of mutual advantage and equal rights. The main methods of developing these ties are production, scientific, and technical cooperation on a long-term and balanced basis and the creation of joint enterprises and production facilities. The procedure for creating joint enterprises and production facilities on Soviet territory and for their operation is determined in accordance with Soviet legislation.

4. Enterprises effecting considerable export shipments of products (work or services) may be granted the right to carry out import and export operations directly (including to markets in the capitalist and developing countries) and to create economically accountable foreign trade companies to this end.

Enterprises with no right to independent access to foreign markets participate in determining the best conditions for exporting their products (work, services) via foreign trade associations belonging to their own or other ministries and departments.

5. With a view to strengthening economic accountability, improving economic motivation and responsibility, and expanding independence in carrying out export and import operations, enterprises:

cooperate with their foreign partners on the basis of economic contracts;

create the foreign currency allowance fund accumulated on the basis of stable long-term norms from funds obtained from export sales of finished products (work, services) and from the entire foreign-currency proceeds derived from shipments of products under production sharing arrangements and sales of licenses;

may obtain bank loans in foreign currency for setting up and developing export production facilities provided that the credit is paid off using export-derived foreign currency proceeds;

bear economic responsibility for the effectiveness of their foreign economic ties and the rational use of foreign currency funds in the interests of developing production and improving its technical standard;

use their existing foreign currency funds to make up for losses incurred through the nonfulfillment of export targets of contractual commitments;

pay foreign customers all fines and other sanctions in foreign currency drawn on their foreign currency allowance fund if the enterprises themselves were to blame for the violations of commitments.

6. To retool and reconstruct production and carry out scientific research, experimental design, and other work, enterprises import products on the basis and within the limits of foreign currency allowance funds or loans. They are also entitled to acquire medical equipment and cultural, domestic, sports, and other goods not included in State allocation plans in CEMA countries for the needs of their workforces.

Funds in enterprises' foreign currency allowance funds are not liable to forfeiture and may be accumulated for use in subsequent years.

7. To carry out scientific and technical work and to develop efficient production facilities linked with cooperation, enterprises may acquire

transferable rubles and national currencies of countries of the socialist commonwealth on credit from the USSR Foreign Trade Bank."

In the Law on Cooperatives, Article 28 is devoted to external economic operations:

"1. Cooperatives and their unions (associations) play an active part in foreign economic operations, help strengthen the country's economy and enhance its international standing, accumulate foreign currency holdings, and create opportunities to speed up scientific and technical progress and increase the efficiency of cooperative production.

Foreign economic operations by cooperatives and their unions (associations) are carried out on the basis of currency self-capitalization and self-financing.

2. Cooperatives engaged in production and their unions (associations) whose products (work, services) are competitive on the foreign market may be granted in accordance with set procedure the right to carry out their own export and import transactions directly.

Cooperatives and their unions (associations) can also carry out their transactions relating to the export and import of goods (work, services) on a contractual basis via the relevant foreign trade organizations.

Cooperatives and their unions (associations) are entitled to carry out foreign trade transactions with foreign cross-border trading partners in accordance with the set procedure.

3. To increase economic motivation and responsibility and enhance independence in carrying out export and import transactions, the foreign currency earnings of cooperatives and their unions (associations) from the export of goods (work, services) remain, after state deductions have been made in line with the norms set by the USSR Council of Ministers, at the cooperatives' disposal; they are not subject to forfeiture, and may be held over for use in subsequent years.

Cooperatives and their unions (associations) may use foreign currency resources earned from the export of goods (work, services) to import equipment, raw and semifinished materials, and other goods (work, services) necessary to develop their production and increase commodity turnover, and to strengthen material and technical base of the sociocultural sphere.

Where a union (association) of cooperatives is authorized to directly carry out export and import transactions currency earnings from foreign economic operations are distributed, after the state deductions have been made, in proportion to each member cooperative's contribution to those currency earnings. By general assent of the cooperatives belonging to a union (association) some of the foreign currency earned by them may be paid into the centralized fund of the union (association).

4. To speed up scientific and technical progress and enhance the competitiveness of their goods and services, cooperatives engaged in production activity may set up joint enterprises and international associations and organizations with relevant organizations in CEMA and other socialist countries, as well as joint enterprises with companies in capitalist and developing countries.

Cooperatives determine by agreement with their foreign partners the production lines of joint enterprises (organizations) and the volume and structure of production based on the effective demand for the goods (work, services) and the conditions of their sale, including prices (tariffs). Joint enterprises (organizations) can be set up on the territory of the USSR and the territory of foreign countries.

Cooperatives and their unions (associations) develop scientific, technical, and production cooperation with relevant enterprises (organizations) in foreign countries, organize joint scientific research, planning, design, and experimental work, set up international collectives of specialists, exchange scientific and technical documentation according to set procedures on mutually agreed terms, and provide assistance in cadre training.

5. For the purpose of developing efficient collaboration with cooperative organizations in other countries, cooperatives and their unions (associations) may, in accordance with their rules, participate in the activities of international cooperative organizations and in the organizations of international exhibitions and fairs.

6. Banks of the USSR may grant to cooperatives and their unions (associations) engaging in foreign economic operations, loans in Soviet and foreign currency as well as in transferable rubles, which loans will be repaid using currency earnings and resources derived from the sale of imported goods or other proprietary resources of cooperatives and their unions (associations).

7. Cooperatives and their unions (associations) bear economic responsibility for the efficiency of their foreign economic operations and the rational utilization of currency resources in the interests of developing production. They are to compensate for damage caused through failure to meet export commitments and other contractual obligations using all their property, including foreign currency resources, and are also to pay the foreign customer fines and other sanctions in foreign currency using their foreign currency reserves if the breach is their responsibility."

In December 1988, the Council of Ministers of the USSR passed a resolution "On the Further Development of External Economic Operations by State, Cooperative and Other Socialized Enterprises, Associations and Organizations."[7] Effective 1 April 1989, this resolution gives the right to all state enterprises, associations, production cooperatives[*] and other organizations whose products (work, services) are competitive in the external market to carry out export and import operations directly.

Enterprises, associations, production cooperatives and other organizations are entitled to export the products they manufacture (work, services), except for certain kinds, the list of which is compiled by the Council of Ministers of the USSR.

Enterprises, associations and other organizations may import, in order to meet their needs, raw and other materials, accessories, machinery and equipment, spare parts, and other goods and services needed for technical retooling, reconstruction and expansion of production, protection of the natural environment, R&D and experimental design work, as well as for other purposes envisaged by the current legislation. Production cooperatives are entitled to import goods (work, services) pursuant to the Law "On Cooperatives in the USSR."

The Council of Ministers of the USSR lays down the list of products (work, services) forbidden for import. The organizations in question may perform export and import operations directly, setting up for this purpose economically accountable foreign trade companies if necessary, or on a contractual basis through other external economic organizations.

The resolution provides for developing a system of registration for enterprises, associations, production cooperatives and other organizations performing export and import operations.

With a view to creating conditions for increasing the efficiency of selling Soviet goods and services in the external market, eliminating unjustified competition between Soviet exporters, reducing the outlays entailed by sales, as well as optimizing purchases made abroad, it was considered expedient to set up various kinds of external economic organizations on a voluntary basis. These include interindustry associations, consortiums, various associations, joint stock companies, trading houses and other organizations with the participation of producers of goods (work, services), external economic associations and, if necessary, banks, supply-and-sales and other organizations.

The State External Economic Commission of the Council of Ministers has the right to suspend the execution of export and import operations by enterprises, associations, production cooperatives and other organizations on requests by the Ministry of External Economic Relations of the USSR and Councils of Ministers of constituent republics in cases where unfair competition occurs or where their operations cause damage to the interests of State.

With the consent of the State External Economic Commission of the Council of Ministers, the Ministry of External Economic Relations of the USSR is entitled to impose, for a certain period, licensing and quota restrictions on exports and imports with regard to specific goods, kinds of services, countries or groups of countries in cases when the status of the balance of payments and other economic and political conditions so warrant.

In addition to State and cooperative organizations which mainly engage in operations on exchanging goods, shipping, banking and some other organizations also perform export and import operations. Social organizations other than cooperatives, as well as organizations set up as joint stock entities also take part in external economic operations. With the above in view, the system of Soviet organizations (subjects in export and import operations) in effect may be presented as follows:

1. Foreign trade associations reporting to the Ministry of External Economic Relations, which account for 80 percent of the entire national turnover of foreign trade.
2. Foreign trade organizations (associations) reporting to other ministries and departments.
3. Foreign trade associations of constituent republics.
4. Scientific-production and production associations in which foreign trade companies have been set up.
5. Associations, enterprises and organizations maintaining direct contacts with enterprises and organizations of the CEMA member countries.
6. Cooperative organizations.
7. Other social organizations.
8. Shipping organizations.
9. Banking companies.
10. Joint stock companies.
11. Other organizations.

Along with Soviet organizations, the right to carry out export and import operations is given to joint enterprises and international commercial organizations set up on the territory of the USSR, as well as foreign companies.

---

[7] Izvestiya, 10 December 1988

[*] Provisions of the resolution covering production cooperatives also apply to all cooperatives engaged in productive operations and their unions (associations).

2. Soviet Organizations as Juridical Persons

All Soviet organizations entitled to perform export and import operations are juridical persons under Soviet law. Relevant provisions of the Basic Civil Legislation of the USSR and constituent republics (henceforth, Basic Legislation), passed by the USSR Supreme Soviet on 8 December, 1961 and in effect since 1 May 1962, apply to them, as do the civil codes of Soviet constituent republics. The civil codes of Soviet constituent republics are almost identical in content. Therefore, further in the present report references are made to only one of them—the Civil Code of the Russian Federation, GK RSFSR (henceforth, GK), passed on 11 June, 1964 and enacted on 1 October 1964.

As provided by Article 11 of the Basic Legislation (Article 23 GK), organizations which have separate assets, can acquire property and personal non-property rights in their name and assume obligations, or be plaintiffs or defendants in courts, arbitration proceedings or courts of arbitration, are recognized as corporate persons. In this instance, the court means State court arbitration—state arbitration, and court of arbitration, the court to which the dispute is referred by agreement between the parties, including ad-hoc arbitration, the Court of Arbitration of the USSR Chamber of Commerce and Industry, the Maritime Arbitration Commission of the same chamber, or a permanently operating court of arbitration in another country.

A juridical person operates on the basis of a charter. Offices and other State organizations financed from the state budget, and, in cases envisaged by the laws of the USSR and its constituent republics, other organizations as well, may operate on the basis of a general charter for organizations of a given type (Article 11 of the Basic Legislation, Article 26 GK).

The legal capacity of a juridical person originates at the moment its charter is adopted, and in cases when it must operate on the basis of a general charter for organizations of a given type, at the moment a competent agency resolves to set it up. If the charter must be registered, the legal capacity of a juridical person originates at the moment of registration (Article 26 GK).

Juridical persons are established in the mode set forth in the legislation of the USSR and its constituent republics. Social organizations for which the law envisages no mode of formation are established through a procedure envisaged by their charter (Article 27 GK). By a decree dated 2 September 1982, the Council of Ministers of the USSR adopted the Charter on Procedures for Setting Up and Liquidating Enterprises, Associations, Organizations and Enterprises [sic].[8] These issues were also touched upon in the Law on the State Enterprise and the Law on Cooperatives.

The juridical person acquires civil rights and contracts civil obligations of commercial organizations associated with using the company name. Brand names and trade marks are regulated by legislation of the USSR (Article 29 GK).

The venue of the constantly operating organ of a juridical person is considered to be its venue (Article 30 GK).

The juridical person may open branch and representative offices as provided for by the legislation of the USSR and constituent republics. The manager of a branch or representative office operates on the power of attorney given by the relevant juridical person (Article 31 GK).

The juridical person is responsible for its obligations with the property belonging to it, which can be subject to forfeiture under the law of the USSR and of constituent republics (Article 13 of the Basic Legislation, Article 32 GK).

The juridical person ceases to exist through liquidation or reorganization (merger, breakup or absorbtion). In mergers and breakups of juridical persons, their property rights and obligations transfer to the newly formed juridical person. When a juridical person is absorbed by another juridical person, its property rights and obligations transfer to the latter (Article 37K). State organizations which are corporate persons are discontinued by the agency which resolved to set them up (Article 38 GK).

3. The Soviet State and State FTOs As Corporate Persons

There is a certain legal connection between the Soviet State and the State FTOs [Foreign Trade Organizations]. The State determines the extent of their legal capacity. It also endows the organization with the means needed to discharge its responsibilities. FTO property transferred to it from the general stock of the State does not cease to be state property. By law, the State is the sole owner of all State property (Article 21 of the Basic Legislation, Article 94 GK). At the same time, the FTO, just as other State juridical persons, enjoys the rights to own, use and administer the property assigned to it within the established confines, which are necessary and sufficient to act on its own in business. The entirety of rights granted to State juridical persons is derived (from the right of State property), but at the same time constitutes the autonomous right of operational control. Due to this, the FTO expresses solely its own will as a juridical person when appearing in business as the subject under the civil law. Contracts and other FTO transactions engender rights and obligations for the organization itself, but not for the State.

---

[8] SP SSSR, 1982, No. 25, item 130

The autonomous appearance of the FTO in business as a juridical person is combined with its subordination to the regimen of the State monopoly in foreign trade and the procedure for carrying out foreign trade operations, which were established by the State, and are mandatory for all Soviet organizations operating in the external market (regardless of whether they are state organizations).

The above suggested the conclusion that it is improper to equate the State, as represented by the agencies of state administration having administrative and State authority powers, with the State FTOs, having no such powers and involved merely in commercial operations. The practical significance of distinguishing clearly between the organs of State administration and the FTO may be exemplified by a case considered by the VTAK [Foreign Trade Arbitration Commission] in 1957 and 1958 which has become widely known—the suit brought against the Foreign Trade Association "Soyuz-Nefteeksport" by the Israeli company "Jordan Investments Limited".[9] In July 1956, a contract was signed between the company and the association, according to which the association undertook to deliver to the company 650,000 tons of fuel oil in 1957 and 1958 on terms FOB Black Sea ports. The association did not fulfill its contractual obligations due to the ban on contract execution by the Ministry of Foreign Trade of the USSR. Participation by Israel in the aggressive war against Egypt was the reason for imposing the ban.

In its complaint, the company sought a ruling on the association indemnifying it for the loses it had suffered as a result of purchasing fuel oil from other suppliers at higher prices. In this instance, from among the arguments justifying the demands of the company, particularly interesting is the indication that "the association cannot properly consider the ban on executing the contract, stated in the letter of 5 November, 1956 by the Ministry to be an act of God, because both the association and the Ministry are agencies of one and the same State."

Representatives of the plaintiff referred to the conclusion of the Max Planck Institute in Hamburg of December 13, 1957 to bolster this argument. The question to which an expert of this institute had to respond was worded as follows: "Is it possible to refer to the instructions of supreme authorities whose actions were caused by another agency of the same State as a circumstance absolving one of responsibility for contractual obligations in world trade with regard to a foreign partner?"

Responding to the question raised, the expert wrote: "All legal systems include a principle according to which fulfilling contractual obligations in the face of a force majeure is legally impossible, and thus the debtor should be relieved from meeting his obligation." However, the expert was not inclined to extend these general rules to the State organizations of socialist countries. He justified the exception made for them by the "tacitly implied" and "natural" condition that "the debtor referring to 'the supreme authority' is not himself an agency of the State authority banning or otherwise interfering with the execution of contractual obligations," and that "the debtor and the State are not the same, and the debtor complies with the State."

The expert brings up this condition yet again, noting that "relief from responsibilities as a result of the action by supreme authorities is recognized only in the case when a party to the contract is legally separate from the State and complies with the State which is responsible for a force majeure." Since the debtor was supposedly a State agency, as formulated by the very question put to the expert, his conclusion contained the statement that such an "agency" is by itself "a part of superior authorities in the State" and that "an obstacle which has arisen as a result of a separate act by the State cannot be considered insurmountable for another agency of the same State." In summation, the following conclusion was formulated: "In world trade, a State trading corporation having the status of a State organ in principle cannot refer, with regard to foreign partners, to the impossibility to execute, due to an action by the superior authorities caused by another agency of the same State."

Characteristically, this conclusion does not contain even a reference to Soviet legislation, despite it being exactly the one applicable in determining the legal status of a Soviet organization and the nature of its relations with the Ministry of Foreign Trade of the USSR.

The Foreign Trade Arbitration Commission was completely justified in refusing the argument of the plaintiff about the identity of the FTO and the Ministry of Foreign Trade. Its ruling on the case states that "by virtue of Article 19 of the Civil Code of the Russian Soviet Federative Socialist Republic (in effect at the time—notice by the author) and its charter, the association is an organization operating under economic accountability, an autonomous subject under the law a juridical person appearing in business under its own name and expressing its will in relations under the law. The association is not an agency of State authority. For this reason, attempts by the company to equate the association with the ministry are without any foundation whatsoever."

---

[9] Arbitrazhnaya praktika, part II, pp. 140-145

The VTAK ruling on this case caused various opinions to appear in the press of capitalists countries. Along with biased remarks and conclusions. Legally well-grounded responses were also published. Professors H. Berman and G. Bustin from the USA wrote: "In our opinion, this ruling is justified because any government is within its rights in trying to prevent the execution of a contract if it believes that the interests of national security so demand, and the consideration that the Soviet exporter was a State agency could not deprive the Soviet government of its right to bar the delivery of strategic goods to a country which was at war with its allies."[10]

At present, the issue of a relationship between State corporate persons on the one hand, and the State itself appearing through its organs of power and management on the other, is being discussed in literature, at international congresses, seminars, symposiums, etc. We may note the preponderance of an approach according to which state economic organizations, including those of socialist countries, may not be confused with agencies of State administration. In particular, this point of view was reflected in the main report of one of the working groups of the Fifth International Congress of Arbitration held in New Delhi in January 1975.[11]

At the same Congress, a different approach to the issue discussed also became apparent in a report by Professor K. H. Bockstiegel from the FRG. According to the author's views, international arbitration cannot be content with the "formal" criterion by which the personal status of a subject under the law is determined by the national law of a particular State. Bockstiegel recommends finding a unified criterion for determining whether equating a party involved in a dispute with the State is admissible. As such a criterion, he suggests the presence or absence of economic and other control by the State over the party to the dispute in question. If the presence of such control is proven, then the party to the dispute should be considered an agency of the State controlling it, despite being a separate juridical person. According to Bockstiegel, one of the practical consequences of such a finding should be that in countries with a monopoly on foreign trade, a refusal by the State to issue an export or import license should not, as a rule, be considered a circumstance relieving a State economic organization of the same country of responsibility.

It is easy to notice that the author has arrived at this conclusion proceeding from a criterion which ignores national legislation applicable in determining the personal status of subjects under the law, meaning mainly the socialist states. State control is carried out in the foreign trade of capitalist countries as well. However, nobody considers the presence of such control grounds for treating export and import companies, including State organizations of these countries, as agencies of the State.

In this respect, it is appropriate to quote a remark by the aforementioned American authors: "It is ironic that the Soviet Union, whose foreign trade organizations have frequently fallen victim to the failure to issue or revocation of export licenses for strategic goods in Western countries, should become the object of such caustic criticism in conjunction with the ruling on the case of the company 'Jordan Investments'".[12]

A ruling by the Court of Appeals in England dated May 26, 1977, in conjunction with a dispute between the British company "Czarnikow Ltd." and the Polish foreign trade organization "Rolimpex" is also interesting. Two contracts for deliveries of sugar from Poland to England were signed between the parties of the dispute. On 5 November 1974, when some of the merchandise had already been delivered, the Council of Ministers of the People's Republic of Poland resolved to ban sugar exports from Poland, effective immediately. This step was taken because of a poor harvest of sugar beets caused by natural disasters. The ban remained in effect through July 1, 1975.

The seller informed the buyer that for him, the export ban was a *forced majeure* circumstance preventing the fulfillment of contractual obligations. He also pointed out that pursuant to the contracts (signed in keeping with the standard form of the Refined Sugar Association) the seller is relieved of responsibility for a failure to execute caused by actions of the government beyond the control of the seller. The purchaser, on his part, demanded that either the contract be fulfilled or losses—in the form of difference between contract prices and those in the world market be indemnified.

In the opinion of arbiters to whom the dispute was referred, the issue of whether the Polish organization was an integral part of the government of the People's Republic of Poland was of decisive importance. The arbiters approached the Court of Appeals with a request to answer this question. The court ruled (by a majority of two to one):

---

[10] Harold J. Berman and George L. Bustin. The Soviet System of Foreign Trade, Law and Policy in International Business, vol. 7, No. 4, 1975, p. 1021

[11] Fifth International Arbitration Congress. Delhi, 1975 Proceedings, p. C 111 a 4

[12] Harold J. Berman and George L. Bustin, p. 43

"The State trading organization of Poland carrying out exports of sugar as a monopoly is not an integral part of the Polish government. Accordingly, it had a right to invoke the force majeure stipulation in the standard rules of the Refined Sugar Association in order to be relieved of responsibility on export contracts with British purchasers in the case when the Polish gov imposed a total ban on sugar exports c poor harvest and sugar prices rose to the level in November 1974."[13]

---

[13] The Times, May 31, 1977

DRAWING UP CONTRACTS WITH U.S. FIRMS

By

Dragunov V.V.

Chief of the Legal Department of "Tekhmashimport" Union Corporation

Regardless of the status of trade relations between the U.S.S.R. and the U.S.A. at various stages in the past, they have always been thoroughly examined by the legal practitioners and the legal theorists of both countries.

The contracts concluded between Soviet foreign trade corporations and U.S. firms were thoroughly studied and analyzed by both Soviet and American lawyers. A number of recommendations have resulted.

Of special importance is the present problem of studying trade contracts when our country is undertaking major reforms in the area of foreign trade. The purpose of these reforms is to increase Soviet participation, making foreign markets more accessible to a greater number of ministries, departments, factories and plants, and organizations. The reforms also deal with the creation of joint ventures with foreign firms in the Soviet Union. It should be noted that these trends will not reduce the volume of business of existing foreign trade organizations; on the contrary, they require new approaches and solutions.

Due to these structural reforms in Soviet foreign trade, the doctrine of "ultra vires" is also undergoing serious changes.

On the one hand, the charters of newly formed foreign trade organizations and firms of industrial ministries provide them with significant rights and product versatility (as applies to the foreign trade organizations of individual republics in particular). On the other hand, foreign trade organizations included in the system of the U.S.S.R. Ministry of Foreign Economic Relations should provide a more appropriate response to industrial contractors. If, for example, a foreign trade organization has been traditionally engaged in the import of machinery and equipment, then, in our opinion, this organization should be ready either to sell its goods on the foreign market or help its clients to do so, and the money thus earned can be used toward the purchase of necessary equipment, spare parts, material, etc. That the foreign trade organizations are to become operationally autonomous, self-sufficient and financially independent in the coming year underlines the need to give them broader powers and eliminate restrictions on products for export or import. In addition, organizations should remain somewhat specialized in accordance with their main activity.

There are certain differences in the way Western contractors approach foreign trade and newly created holding companies and joint ventures. If we take as an example the purchase of a complete set of equipment by a joint venture, we have a situation where the foreign partner is required to obtain a guarantee for the entire amount of the contract from a first class bank, which poses a problem for the former. If the purchase is made by a foreign trade organization which has done business in the past with the firm, then the problem of securing the bank guarantee is eliminated.

Since there are numerous types of contracts between the export and import organizations and firms of our countries, each with special problems, we should discuss certain aspects of drafting contracts for the import of ready-made U.S. products, more specifically, for the import of machinery and equipment from the U.S.A. to the U.S.S.R.

Before we begin to consider individual articles in such contracts, it should be noted that the contracts of various foreign trade organizations differ significantly among themselves. For example, we know that contracts of Soviet foreign trade organizations require a guarantee bond which is usually 5 to 10% of the total contract award to facilitate the vendor start up requirements. When one foreign trade organization stipulates that payment of the bond be effected after the guarantee period has expired, the other will require that it be paid following successful completion of tests and a demonstration that the technological guarantees have been successfully met.

Soviet law is not very explicit in the area of foreign trade. Thus, in accordance with Article 125 of the Civil Code of the U.S.S.R. any transactions of Soviet foreign trade organizations, the order of their signature is defined by the Civil Code of the U.S.S.R. regardless of where this transaction occurs. The February 14, Decree of the Council of Ministers of the U.S.S.R. "On The Signature of Foreign Trade Transactions"[1] stipulates that the above transactions must be countersigned. The organizational chart establishes that the signature of foreign trade transactions falls to the director of the organization, his deputies, and to those so authorized by a proxy signed by the director. The foreign trade organizations have their own charters and consequently, the requirements vary accordingly.

---

[1] Collection of Decrees of the U.S.S.R., No. 6, p. 35

When purchasing complete equipment systems for plants and installations, the object of the contract is formulated in very general terms, including not only the actual material but also know-how, engineering, licenses, purchase of spare parts following expiration of the warranty period, as well as the assembly manuals for the material purchased.

When purchasing goods, the prices in the contracts have to be stipulated either as "f.o.b." or as "f.a.s.". Usually, the prices are fixed and are not subject to change. Generally, when purchasing complete equipment for plants or installations, a certain sum is set aside for the purchase of spare parts after expiration of the warranty period for the lots, the prices of which are to be determined at a later stage (usually, when the technical documentation is consigned and the purchase is legalized as a supplement to the contract).

The delivery dates are usually specified in months beginning from the date the contract becomes effective. The delivery date is usually the date of the "clean" bill of lading. Some contracts specify that if "the ship does not arrive at the destination port" or if the goods cannot be loaded on board for certain reasons, then the goods are consigned to the freight forwarders indicated in the contract. There is no penalty for delay in such cases. Certain delivery dates are important for insurance purposes and transfer of property rights and for payment of the vendor's bills, as well as for payment of customary penalties in case of delays in delivery.

In certain instances, as per Paragraph 41 of the General Conditions of Delivery of Goods between Organizations of CMEA Member Countries (Operative Control and Planning CMEA 1968 - 1975 updated in 1979), U.S. partners attempt to negotiate risk transfer and property rights transfer as effective on the date of the warehouse receipt in contracts related to the delivery of equipment to the U.S.S.R. In so doing, they overlook a number of factors and namely: the CMEA Control and Planning, mandatory in foreign trade transactions between the CMEA member countries; CMEA Operative Control and Planning's balancing role at the international level; the secure equitable interests for all CMEA member countries and to ensure that the "uncertainty" factor inherent in relations with U.S. corporations is minimized.

During the seminar held last year in Moscow, the speeches of the U.S. group characterized the international economic ties of the USSR as unpredictable and unforeseeable in terms of legal regulation. This is probably true to a certain extent for any branch of the law of any country. However, we should point out that the denial of an export license is an act of the sovereign state; whereas the cancellation of a previously issued license cannot be legally justified and, in our opinion, this leads to a certain degree of apprehension.

The contracts of the Soviet foreign trade organizations usually include penalties for delays in the delivery of equipment, technical documentation, spare parts, and other goods. In this particular case in contracts with firms under Anglo-American law these sanctions are usually translated as "adjusted and defined" losses.

When the shipment delay exceeds a certain period, ordinarily 3 to 5 months, the client is entitled to cancel the unused part of the contract or the entire contract. Sometimes U.S. contractors insist on including the unilateral right to reject the contract if the delay exceeds the time period agreed upon. This condition is included in the "force majeure" article. From the point of review of Soviet foreign trade organizations, the right of the vendor to cancel the contract is unjustified from the economic point of view. Foreign trade contracts, especially contracts for the purchase of complete systems of precision equipment, are concluded as a result of very tight competition. On the other hand, a Soviet foreign trade organization may be interested in compliance with the contract even if the delay exceeds the contractual time period agreed upon. Thus, in our opinion, formal equality in this matter will not reflect actual interests.

The interest rates on penalties per week of delay in the delivery and their maximum amount may vary depending on the total sum of the contract.

Payment conditions of contracts may differ depending on the financing sources. When payment is effected in cash, there are usually no advance payments. When payment is made through a line of credit, an advance of 5% to 10% of the total contract is required. The balance is paid upon consignment of the equipment and accompanying documentation. Another type of credit purchase would require a payment of 15% of the total amount in cash and 85% through financing. As stated above, the guarantee sum in the amount of 5% to 10% of the total cost of the contract is also stipulated. In small contracts, a bank guarantee may replace the required deposit.

The vendor of finished products is bound by a number of complex and varied guarantees both before and during performance of the contract, especially where complete installations are concerned. We cannot examine all of the problems and situations which might surface under any of these varied conditions. We will limit ourselves here to examining the vendor's responsibility when the guarantees are improperly performed. We believe this can lead to very serious problems because Soviet customers are switching to a new economic system, one that is operationally independent and auto-financed as defined by the U.S.S.R. Law On State Enterprise which entered into effect January 1, 1988. We can easily project that these businesses will demand compensation for losses from foreign trade resulting from the improper performance of contractual obligations by a foreign supplier or losses related to delays in start up because of equipment defects, etc. Such tendencies may lead not only to stringent requirements as to the quality of equipment supplied by the U.S. partner, but also to well defined limits on responsibility for non-performance of guarantee obligations.

The "force majeure" clause releasing one party from liability for non-performance or delays in the performance of contractual obligations when equipment from the U.S.A. is imported into the U.S.S.R. is usually very limited in scope, providing only for events such as fire, floods, earthquakes. However, there are also a number of other elements which might come into play. Despite the above, and the fact that this particular article has been discussed at length, it should be noted that the circumstances mentioned earlier do not play a significant role in the trade relations between our countries.

Contracts between Soviet foreign trade organizations and U.S. firms most often resort to arbitration with venue in the city of Stockholm (Sweden) under jurisdiction of Swedish law. Sometimes cases are sent to the Arbitration Court from the Chamber of Commerce of the U.S.S.R. In other contracts there is ad hoc arbitration in Switzerland under the laws of that country. We do not believe these to be valid options because the arbitration decisions by the Courts of these countries cannot be appealed.

Of special importance to Soviet foreign trade organizations is the vendor's guarantee not to infringe on the patent rights of third parties included under either the "General Conditions" or the "Guarantee". This takes on even greater significance if we take into account the fact that the vendor is more familiar with the developments and inventions of competing firms. In this case, if the client sustains any losses related to claims of patent infringement by third parties, the vendor is obligated to compensate for these losses and ensure that the object of the contract may be unconditionally utilized.

In conclusion, we should highlight the specific form of trade cooperation between Soviet organizations and U.S. corporations. It is expressed in a contract for the purchase of equipment between a Soviet foreign trade organization and an engineering firm of any Western country, utilizing technology belonging to U.S. firms. In these cases, the licensing conditions (usually in the form of a supplemental license) and cost are often discussed directly between Soviet and U.S. partners.

LEGAL REGULATION OF THE FOREIGN-ECONOMIC CONTRACTS

By
A. S. Komarov
Associate Professor
Department of Legal Discipline USSR Academy of Foreign Trade

The norms which constitute the general civil legislation of the USSR determine the rights and obligations of the parties with respect to foreign-trade deals in cases, when, in compliance with the norms of private international law, or the will of the contracting parties, the contract signed by them is to be regulated by Soviet law.

This means that many norms existing in Soviet legislation that are designated to regulate the economic relationaship between Soviet enterprises and organizations (for example, contracts on delivery of the goods for export or on fulfilling agencies for import) cannot be applied to a foreign-economic contract, (a contract where one of the parties is a foreign partner).

The sources of general civil-legal norms are the Fundamental Civil Legislation of the USSR and the Union Republics and the Civil Codes of the Union Republics. The Civil Codes of the Union Republics, each of which is made up in accordance with Fundamental Legislation, develop and specify its norms. The republican civil-legal regulation reflected in the Codes coincides on a majority of questions, especially the most principled ones and those applying to the basic civil-legal institutions. Therefore, the norms, for example, of the Civil Code of the RSFSR are representative in illustrating the civil law in force in the entire territory of the USSR. Thus, different from the legal system of the USA, where Federal law and the law of separate states are represented by legal systems not formally interconnected and in which the decisions of this or that question even with respect to basic legal problems often differ, the Soviet civil law, both on the All-Union and on the Republican level, is a coordinated system of legal norms. As for the question, the law of which Union Republic is to be applied in a particular case, it must be solved depending upon the place where the foreign-trade deal was closed, i.e. the legislation of the Republic where the contract was signed should be applied.

In speaking about the sources of Soviet civil law, it should also be noted that one of the typical features of the legal system in the USSR, as different from the law of the USA, is that judicial practice is not a source of the law, though it plays quite a noticeable role in clarifying its contents.

As for the application of the norms of USSR general civil legislation to foreign-trade contracts, it is worth noting at this juncture that these norms in the majority of cases are mainly meant to regulate everyday transactions between Soviet citizens, rather than to regulate commercial operations. This has resulted in the regulation of the reciprocal rights and obligations of the partners in civil law relations by the basic institutions of the law of contracts in Soviet civil legislation.

The overwhelming majority of norms of Soviet law which are applied to the regulation of the rights and obligations of the parties under a foreign-trade contract, are of a dispositive (descriptive) nature. This makes it possible for the parties entering into a contract to flexibly approach the formulation of the contract's contents as well as take into consideration the peculiarities in connection with a particular foreign-trade deal. As far as the questions remaining unaddressed in the contract are concerned, the relevant dispositive norms contained in the civil legislation apply.

If the law does not contain norms specifically regulating the legal relations which are subject to a dispute, the court will have to apply, by force of Article 12 of the Fundamental Civil Legislation of the USSR and Union Republics and Article 10 of the Civil Procedural Code of the RSFSR, another law regulating such relations i.e. make use of law by analogy. In the absence of such analygy, the court must apply the general principles of law which are the essence of Soviet legislation.

From the point of view of the juridical-technical tradition, the civil-legal norms that constitute Soviet legislation reflect the historic connection with the development of the continental legal system. Many concepts and approaches used in Soviet civil law are closer to the norms of law found in the West-European countries, as the FRG, Switzerland, France and Italy. These norms are based more on Roman law than on the principles used in the Anglo-Saxon legal system.

Signing a contract

Foreign-trade deals closed by Soviet organizations are legally invalid unless they are signed in writing (Article 45 and 565 of the Civil Code of the RSFSR). Thus, the provision in Soviet law allowing contracts to be concluded based on oral or written acceptance, or silent acceptance on the part of a Soviet organization (Article 42 of the Civil Code of the RSFSR) are not applied in the case of foreign economic contracts.

Soviet legislation makes a distinction between the conclusion of a contract based upon an offer made subject to acceptance within a specified time limit, and the conclusion of a contract based on a offer made without a time limit for acceptance. (Articles 162 and 163 of the Civil Code of the RSFSR). When a time limit exists, a contract is concluded if the acceptance is received within the time limit. (Article 162 of the Civil Code of the RSFSR). If the offer is made in writing, but does not have a specified time limit for reply, the contract is considered to be signed if acceptance is received within a normal time period (Article 163 of the Civil Code of the RSFSR).

If the acceptance is received after the time limit, or if it contains terms and conditions other than those in the original offer, the acceptance is considered under the law as a new offer (Articles 164 and 165 of the Civil Code of the RSFSR). If it appears that a late acceptance was actually forwarded within the time limit specified, the contract is considered signed, unless the offeror immediately notifies the acceptor about the lateness of the acceptance. Only when such notification is made, will a late acceptance be deemed a new offer. (Article 164 of the Civil Code of the RSFSR).

Soviet law establishes that a contract concluded through correspondence, is signed at the time and place that the offeror receives the acceptance. (Articles 162 and 163 of the Civil Code of the RSFSR). The contract is considered signed only when agreement has been reached by the parties on all of its essential terms. The essential terms are those required by the law for contracts of a particular type, as well as those the parties have agreed to in writing. (Article 160 of the Civil Code of the RSFSR). For example, in a contract for a purchase and sale of goods, the provisions on the subject matter of the contract (the description of the goods and their quantity) and the provision on the price are considered essential under the law (Article 237 of the Civil Code of the RSFSR). The norm of the law which makes essential all of those items necessary for a contract, means that the absence of an agreement on such essential terms signifies that the contract has not been signed.

It is possible to draw a conclusion from the above on certain conceptual differences in the settlement of the question on signing the contract under Soviet law and under the law of the USA, at least to the extent it is reflected in the Unified Commercial Code of the USA (Articles from 2-201 to 2-210). The questions on the legal force of the proposal to sign the contract and on the time, terms and conditions of signing the contract cinstitute such items first of all.

General provisions on the execution of the contract

The fundamental and most general principle of Soviet law related to the settlement of contractual relations is the principle of the obligation of fulfillment of the undertaken obligations, reflected in the norms of the Civil Legislation in force.

In accordance with Article 168 of the Civil Code of the RSFSR, all contract obligations must be discharged properly and within the fixed time limits for compliance (including those required by law, the plan and the contract, itself). In the absence of specific instructions, the obligations must be discharged in compliance with the usual requirements.

By force of Article 169 of the Civil Code of the RSFSR, a unilateral refusal to discharge the obligations of a contract and a unilateral amendment of the terms and conditions of the contract are not allowed, except for the cases provided for in the law. Thus, as different from the concept of the "general law" on the contents of a contractual obligation, there follows from the given provisions of Soviet civil legislation a principle of specific performance of the contract or, in other words, the obligation of the debtor to actually execute the contract. The legal consequences of the existence in Soviet law of the principle of specific performance of the contract is expressed in the following main legal points:

a. the debtor is not within his right, without consent of the contracting party, to replace the performance provided for under the contract by any other performance or provide the creditor instead of such performance with its money equivalent;

b. reimbursement of the losses or payment of the contractual liquidated damages does not relieve the debtor from the specific performance of a contract. (Articles 221 and 191 of the Civil Code of the RSFSR).

The provisions of Soviet civil law that bear on the performance of contractual obligations are rather detailed and provide in dispositive form for the regulation of the rights and obligations of the contracting parties in relation to the time and place of the discharge of the obligations, the procedure of discharging alternative obligations, and the regulation of obligations in the case of multiple creditors or debtors.

The basic provisions on the performance of contracts are formulated in the civil legislation, and are applicable to certain types of contracts (of purchase and sale, turn-key, renting, etc.), taking into consideration the specific features of particular legal relations.

When entering into foreign-trade contracts, the parties, as a rule, utilize in the maximum possible way, while formulating their rights and obligations, the possibilities provided to them by the disposition (descriptions) in the law. The circumstance which should also be taken into consideration is that the settlement of any questions of civil legal relations by the legislation is actually addressed for non-commercial relations. [Editor's note: In other words, when drafting a contract, the parties should try to use clauses that are based on descriptions, in the Soviet Civil Code. In doing this, however, the parties should be aware that the Civil Code provisions were not drafted with commercial relations in mind.]

It appears to be useful, nevertheless, to illustrate the approach of Soviet law to the question of performance of a contract, using as an example the most important moment in mutual relations of the participants to an international purchase—sale of commodities. In accordance with Article 237 of the Civil Code of the RSFSR, the seller binds himself under the contract of purchase—sale to transfer the property into the buyer's ownership, and the buyer binds himself to accept the property and pay a certain sum of money for it.

As is provided in Article 135 of the Civil Code, the delivery is considered to occur when the merchandise is physically handed to the buyer, or when the merchandise is handed over to the transport organization for dispatch to the buyer, or when it is handed over to the post office for forwarding to the buyer if it has been previously agreed that personal delivery or official transport is not required. The delivery is said to occur when the bill of lading or another order document for the merchandise is delivered. Soviet law as well as court and arbitration practice consider the delivery of the merchandise by the seller to occur simultaneously with its acceptance by the buyer.

In accordance with the contract, the delivery of the goods means that the seller has performed his main obligation under the contract. From that moment, unless the law or contract provides otherwise, the right of property in the goods arises with the buyer.

Simultaneously with the arising of the right of property, the risk of accidental perishment or accidental damage to the goods is transferred to the seller. In accordance with established international trade practice, Soviet organizations specify in the signed contracts that the delivery by the seller of the goods and their acceptance by the buyer usually is by means of agreeing upon the basic terms and conditions: caf, cif, fob etc. References to 1980 Incoterms are also used.

If the seller, in violation of the contract, does not deliver the merchandise to the buyer, the latter is within his right to demand delivery of the goods as well as indemnification of the losses caused by the delay in the performance. The buyer may, alternatively, repudiate the contract and require reimbursement of his losses. (Article 243 of the Civil Code of the RSFSR).

In case of delivery by the seller of goods of inadequate quality, the buyer is within his right to demand that the contract be terminated on the basis of Article 246 of the Civil Code of the RSFSR. This will eventually result in the same consequences as a refusal to accept the goods.

As a rule, a foreign-trade contract provides for the time of discharge of the obligations, i.e., for example, the time of delivery of goods. A default by the seller of his obligations to deliver goods within the pre-set dates constitutes a violation of his obligations with all of the consequences following therefrom. At the same time, there are cases when the seller discharges his obligations ahead of the scheduled time. In such a case, if the contract does not exclude the seller's right to delivery of commodities ahead of schedule, he is within his right to discharge his obligation ahead of schedule, and the buyer is not within his right to refuse to accept such discharge of the obligations (Article 173 of the Civil Code of the RSFSR). The same right of the seller can follow either from the law or the essence of the obligation.

The rights of the buyer in a case of the sale of goods of inadequate quality are provided for in Article 246 of the Civil Code of the RSFSR. In accordance with this Article, the buyer to whom the thing of inadequate quality has been sold, if its defects have not been specified by the seller, is within his right to demand at his choice:

a) that the thing, defined in the contract by the featurers of the kind, be replaced by a thing of proper quality; or

b) that the purchase price be correspondingly decreased; or

c) that the defects of the thing be remedied by the seller, free of charge or expenses of the buyer for their rectification reimbursed; or

d) the termination of the contract with the indemnification of the buyer's losses.

The listed requirements, except for the demand on the indemnification of the losses must be met irrespective of the seller's fault (Commentary to the Civil Code of the RSFSR, Moscow, "Legal literature", 1982, page 285).

Claims regarding defects should be made to the seller immediately upon their discovery but, however, not later than 6 months from the day of delivery of the goods. A 6-month limitation period is set for suits in connection with the defects in merchandise, which is calculated from the date of the expiration of the time-limits specified for making claims regarding the defects.

Responsibility for the violation of a contract

When a party violates its obligations under a contract, it bears civil and legal responsibility. The general form of such responsibility, fixed by the law in the event of any of the contractual obligations being violated, is the indemnification of any loses caused by the violation of the contract.

In order to charge a party that has breached a contract with civil and legal responsibility for the breech, the grounds for the responsibility must be provided for in the law. For breech of contract, the party must be at fault, the contracting party must have suffered loss, and there must be a causal connection between the breech of the contract and the subsequent losses.

Fault is defined as either the intention or negligence of the debtor (Article 222 of the Civil Code of the RSFSR), it being understood that negligence can be gross or simple. The degree of the admitted fault does not influence the responsibility of the debtor according to the general rule, however, in certain cases it is taken into consideration when it comes to determining the scope of responsibility of the debtor. In accordance with Article 222 of the Civil Code of the RSFSR, the burden of proof that he is without fault rests on the person who has violated his obligation. Thus, the principle of the presumption of fault on the part of the offender is in force in Soviet civil law. The fault of the contracting party who has breeched the contract is established not on the basis of subjective possibilities of the debtor but taking into account the objective criteria of the behavior worked out in the practice of commodity turnover while discharging the contractual obligations in respective field. [Editor's note: "Commercial practice" is used in determining the breeching party's fault.]

The losses subject to indemnification in case of a breech of a contract are defined in the legislation as the expenses made by the creditor, the loss of or damage to his property as well as the creditor's lost profits (those he would have received if the obligation had been discharged by the debtor) (Article 219 of the Civil Code of the RSFSR). Thus, the party that has breeched the contract has to indemnify the contracting party that has suffered damage against the real damage done to the property and against the profit not received by him. The notion of indirect losses is absent from Soviet legislation. However, according to both the practice and theory, such losses are not subject to indemnification. The court or arbitration as per Article 224 of the Civil Code of the RSFSR is within its right to reduce the level of the debtor's responsibility, if no measures had been taken by the creditor to reduce the losses.

Another wide-spread form of responsibility is agreed and liquidated damages (fine, penalty). Agreed and liquidated damages are characterized in Article 187 of the Civil Code of the RSFSR as the sum of money defined by the law or the contract which the debtor has to pay to the creditor in case of a breech. Introducing agreed and liquidated damages into foreign-trade contracts is a rather wide-spread practice. However, the approach to their legal regulation differs in the Soviet law from that in U.S. law.

Different from the Anglo-American "general law," Soviet law allows for agreed and liquidated damages of a punititive nature. According to Soviet law, first, the size of the agreed liquidated damage should not necessarily correspond to the assumed damage suffered as a result of the breech of the contract. Second, the contract may provide for the right to indemnification of the losses in the full sum over and above the agreed and liquidated damage (Article 189 of the Civil Code of the RSFSR). In addition, if the parties to the contract have not provided in the contract for any other relation between the agreed and liquidated damages and the loses, the latter are subject to indemnification over and above the sum not covered by the agreed and liquidated damages. At the same time, if the agreed and liquidated damages to be paid are excessively big as compared with the loses of the creditor, the court and arbitration are within their right to reduce the agreed and liquidated damages.

It is necessary to take into account the degree of fulfilment of the obligations by the debtor not only with respect to the property but also any other interest of the creditor.

Termination of the contract

One of the reasons for terminating a contract under Soviet civil law is the impossibility of its execution. This regulation is similar by its nature to the Anglo-American notion of "futility" of the contract, though the initial points of the concepts of Soviet and Anglo-American law on this question are directly the opposite.

In accordance with Article 235 of the Civil Code of the RSFSR, an obligation ceases to exist due to the impossibility of its discharge, if it was caused by a circumstance for which the debtor is not held responsible. According to the general rule, the debtor bears the material liability only in the presence of fault (Article 222 of the Civil Code of the RSFSR). On the other hand, Anglo-American law provides that the excuse from obligations in connection with the futility of the contract is an exception from the general rule on the absolute nature of the contractual obligation.

The most typical case of the onset of the impossibility of discharging an obligation is the effective force-majeur event or an accidental perishment of the contract subject defined by individual features. According to the Soviet law (Article 85 of the Civil Code of the RSFSR) force-majeur is an event of extraordinary nature and one which cannot be prevented under the given circumstances. As a rule, acts of God are always referred to in practice as force-majeur circumstances.

The question of the so-called "legal impossibility" of execution (government prohibitions, limitations, cancellation of the export and import licenses, etc) has not been directly solved by legislation. However, arbitration practice as well as doctrine recognizes that such events can, in certain cases, be considered as a force-majeur (beyond control) with similar consequences for cessation of the obligations.

Soviet legislation also does not address the question of the consequences of a radical change in circumstances which occured after signing the contract. At the same time, a change of the market situation (a considerable increase of the price) is not recognized in arbitration practice as a circumstance which could permit the cessation of the obligations since it does not meet the criteria set for force-majeur.

Responsibility for product quality

Soviet civil legislation does not contain special rules regulating the responsibility for defects of products. The buyer (consumer) that has suffered damage as a result of defects of goods procured by him is within his right to protect his property interest on the basis of both the provisions referred to the field of contract law (purchase-sale) and the norms of the law of torts (causing the damage).

As was mentioned above, the buyer is within his right, when goods of inadequate quality are sold to him, to demand at his choice, either the replacement of the thing defined in the contract by the features of the kind by another thing of a proper quality; or a corresponding decrease in the purchase price; or a free-of-charge elimination by the seller of the defects in the goods; or reimbursement of the buyer's expenses for rectification of the defects; or termination of the contract with reimbursement of the losses suffered by the buyer. (Article 41 of the Fundamental Civil Legislation of the USSR and Union Republics, Article 246 of the Civil Code of the RSFSR).

Based on the Decision of the Plenery meeting of the Supreme Court of the USSR of April 5, 1985 No. 1, one can arrive at a conclusion that in cases where damages (losses) arise as a result of defects in the goods for which a guarantee was presented, and where the defects are discovered within the guarantee period, the claim of the purchaser should be addressed to the seller who then must indemnify the buyer against the losses (damage) suffered by him due to the goods being of inadequate quality. In other words, in this case the responsibility shall be based on the violation of the guarantee following, as a rule, from the statements of goods' manufacturer. It appears that if the seller is recognized as being obliged to indemnify the buyer for the damage, he shall be within his right to place a demand of goods on the manufacturer of the goods.

In cases where hidden defects in the goods are discovered in the process of their operation upon expiry of the guarantee period, as a result of which damage is done to the citizen's personal or property, the manufacturing enterprise has to make it good on the basis of Article 88 of the Fundamental Civil Legislation (Article 444 of the Civil Code of the RSFSR), unless the manufacturer proves that the damage was the result of incorrect operation or storage of the good. Thus, in the given case, there is a tort basis of responsibility for the damage caused by a defective product, and the manufacturer of the goods, not the seller is responsible to the consumer.

Though it literally follows from the above provision contained in the mentioned Decision of the Supreme Court of the USSR that the clarification on the application of the corresponding norms of the Soviet law refers only to goods for which a guarantee is established, it would hardly be right to limit this approach only by such goods, excluding a considerable range of consumer goods for which no guarantee period is fixed.

It is also worth noting that the responsibility for damage caused by defects of goods according to the text of the Decision of the Plenary meeting of the Supreme Court of the USSR signifies, to a certain degree, a deviation from the principle of fault in the law of torts. It is a determination, to a certain degree, of strict liability of the manufacturer of the goods for defects in his products. This is the case since the manufacturer is relieved responsibility only when certain actions of the party that has suffered damage served as the cause of such damage rather than in all the cases when the damage caused is not through the manufacturer's fault. From this point of view, the consumer making a claim regarding the indemnification of the loses suffered by him because of inadequate quality of the goods during the guarantee period for the goods is in a more complicated position. In this case, the seller's responsibility is built on the principle of fault. (Article 222 of the Criminal Code of the RSFSR).

SUPPORTING DOCUMENTS

CONCERNING THE FURTHER DEVELOPMENT OF FOREIGN ECONOMIC ACTIVITIES OF STATE COOPERATIVE AND OTHER PUBLIC ENTERPRISES, ENTITIES AND ORGANISATIONS

Resolution of Council of Ministers of the USSR, December 2, 1988

To expand sizeably the sphere of foreign economic links, draw enterprises, associations, production cooperatives and other organisations into this work, further simplify the existing procedure for the organisation of foreign economic links, maintain them on terms of genuine currency self-repayment, use consistently commodity and money relations, the USSR Council of Ministers decreed.

1. To consider it as a major task of union, republican, sectoral and local government bodies to ensure in every way organisational and economic conditions for actively drawing enterprises, associations, production cooperatives and other organisations into various forms of foreign economic activity on the principles of currency self-repayment, and for developing socialist enterprise.

Attaching a priority importance to the development of cooperation with socialist countries, to create consistently the necessary conditions for the USSR's vigorous involvement in the process of forming a single market of the member countries of the Council for Mutual Economic Assistance (CMEA) on the basis of deepening integration, greater involvement in foreign economic activity of enterprises, associations and organisations, giving greater autonomy to them in these matters, using commodity and money relations and interaction of national markets.

Organisational and Legal Issues of Foreign Economic Activity

2. To recognise it as necessary to democratise fundamentally the procedure for granting the right to independent export-import operations (including the markets of capitalist and developing countries).

To extend starting from April 1, 1989 the right to conduct export-import operations to all enterprises, associations, and production cooperatives (the provisions of this resolution, which are applied to production cooperatives, cover also all cooperatives engaged in production activity, their unions or associations, and other organisations whose output, work or services are competitive on foreign markets). Export-import operations are conducted on the basis of currency self-repayment, the results being an organic part of the fruits of economic activity and influence the formation of economic stimulation and currency funds.

Enterprises, associations, production cooperatives and other organisations can carry out export-import operations directly, creating to this end if need be cost-accounting foreign economic firms, or on a contractual basis through other foreign economic organisations, being guided in so doing by achieving the best export-import terms, currency self-repayment and self-financing, and proceeding from the premise that the state is not accountable for their obligations. The norms of currency deductions, which are fixed for enterprises, associations, production cooperatives and other organisations, are not changed depending on a foreign economic organisation through which the export of their products, work or services is effected.

The Ministry of Foreign Economic Relations, the Ministry of Finance, and the Chamber of Commerce and Industry of the USSR are charged with elaborating and submitting to the USSR Council of Ministers proposals for setting up a system to register enterprises, associations, production cooperatives and other organisations which conduct export-import operations.

The State Foreign Economic Commission of the USSR Council of Ministers is extended the right to suspend, on the presentation of the Ministry of Foreign Economic Relations of the USSR and the Councils of Ministers of Union Republics, export-import operations of enterprises, associations, production cooperatives and other organisations in cases of unfair competition or when their activity impairs the interests of the state.

3. To create conditions for enhancng the effectiveness of the sale of Soviet goods and services on foreign market, removing unjustified competition among Soviet exporters, reducing costs related to marketing, and also optimising purchases abroad, it was recognised as expedient to form on a voluntary basis various types of foreign economic organisations, among them inter-sectoral associations, consortia, associations, joint stock societies, trade houses and other organisations involving producers of output (work and service), foreign economic associations and also, if need be, banks, supply and marketing and other organisations. The norms for currency deductions established for parties to such organisations are not changed. Relations among parties to such organisations are built under the legislation in effect in the country and their founding documents.

The aforementioned foreign economic organisations involving foreign partners are formed according to the procedure under which joint ventures are launched.

The statutes of foreign economic organisations, which are formed in line with this item, are endorsed (adopted) in agreement with the Ministry of Foreign Economic Relations of the USSR.

Enterprises, associations, production cooperatives and other organisations can export the output (work, services) turned out by them, with the exception of separate types whose list is defined by the USSR Council of Ministers.

Enterprises, associations and other organisations can import for their needs, on their own or borrowed funds, raw and other materials, accessories, machines, equipment, spare parts, other goods and services needed for modernising, retooling and expanding production, environmental protection, conducting research work, design, and for other purposes envisaged by the legislation in force in the country. Production cooperatives import on their own or borrowed funds commodities (work, services) under the USSR law "on cooperative ventures in the USSR".

The USSR Council of Ministers defines the list of goods (work, services) whose import is banned.

It is also permitted to send on currency available with an enterprise and under the established procedure specialists and other workes to take part in negotiations on scientific-technical, production and commercial issues, in international exhibitions and fairs to share experience and undergo training, and carry out other activity under the legislation in effect in the country.

State enterprises, associations and organisations are allowed to spend, in keeping with the decision of labour collectives, the available funds in transferable roubles and in national currencies of the CMEA member countries fully and up to 10 percent (15 percent for enterprises, associations and organisations of the Far Eastern economic region) of funds in other currencies, including freely convertible currency, on the acquisition of consumer goods, medicines and medical equipment, shoring up the materials and equipment base of the social and cultural sector.

The USSR Ministry of Trade and the USSR State Committee for Prices should define the procedure and terms for the sale of consumer goods purchased for currency.

5. The USSR Ministry of Foreign Economic Relations with the consent of the State Foreign Economic Commission of the USSR Council of Ministers introduces for definite periods licencing, quotes on the export and import of individual goods, types of services, countries or groups of countries in those cases when this is called for by the state of payments relations, other economic and political conditions.

6. To ensure state interests in maintaining foreign economic links, respective ministries and departments of the USSR are entrusted with elaborating proposals for a new customs tariff of the USSR.

In so doing they should proceed from the possibility of using tariff in setting prices for imported goods, in regulating demand and supply on the domestic market of the country, and also as a base for conducting international commercial negotiations, including with the General Agreement on Tariffs and Trade (GATT) and the European Common Market (EEC).

To develop and ensure a stage-by-stage enforcement starting from January 1, 1989 of a package of measures for prompt non-tariff regulations of foreign economic links of the USSR, envisaging, in part, enforcement of respective customs regulations and utilisation of the instruments of non-tariff regulation. In developing this system, account should be made of the USSR's international commitments, the possibility of applying it to regulate foreign economic links of the USSR, including for purposes of their balanced development and achieving favourable results at international commercial negotiations.

To expedite the development of customs statistics to include the register of cooperation maintained on the basis of direct links, cross-border and coastal trade, bearing in mind to ensure its introduction before 1990.

7. The Ministry of Foreign Economic Relations and the Ministry of Justice of the USSR should keep refining, jointly with USSR ministries and departments concerned and the ministries of Union Republics, the legal base of foreign economic links of the USSR, above all new forms of cooperation. To consider it necessary to develop within 1989—1990 a legislation on joint stock societies, on the rules of competition, on the protection of consumer, on currency operations regime, on economic activity of Soviet enterprises and organisations abroad, and on other matters of foreign economic links of the USSR. The work should be completed by drafting by 1990 a law of the USSR on foreign trade and other types of foreign economic activity.

8. It has planned to continue the line for a consistent development and deepening of the principle of currency self-repayment of enterprises, associations and organisations, branches of the national economy, and territorial complexes, for enhancing the efficiency of their foreign economic activity.

The USSR State Planning Committee and the USSR Ministry of Finance should develop and submit to the USSR Council of Ministers the proposals for switching starting from January 1, 1991 separate sectors of the national economy of the USSR, the Union Republics, territorial complexes, first and foremost, the Far Eastern economic region to full scale currency self-repayment. In so doing, they should consider the procedure of forming centralised currency funds in sectors of the national economy and Union Republics to tackle their social and economic tasks.

To recognise as necessary to switch over starting from 1991 to the establishment of stable norms for deductions to the state from currency earned by enterprises, associations, production cooperatives and other organisations from the export of their goods (work, services). These norms will be fixed for a five year term.

To consider it necessary to be strictly guided in foreign economic activity by stable norms.

The USSR State Planning Committee and the USSR Finance Committee should work out jointly with ministries and departments of the USSR and the Councils of Ministers of Union Republics and submit to the Council of Ministers of the USSR the proposals for fixing the afor-mentioned norms for the 13th five year plan period.

The ministries and departments of the USSR and the Council of Ministers of Union Republics should set for enterprises, associations and organisations norms of deductions to the state from currency earnings, which are differentiated, if need be, with account of the specifics of their work. In so doing, the afore-mentioned bodies should ensure deductions to the state under the norm which is established for them.

9. To implement the provisions of the USSR law "on the state enterprise (association)", the USSR State Planning Committee, the USSR State Committee for Supply, ministries and departments of the USSR should set aside funds for the export of products distributed by them in the first place and in the required amount.

To allow state enterprises, associations and organisations to conclude, prior to allotting under the established procedure goods for export, contracts for the export of machines and equipment in the planned period and subsequent years in volumes of up to 100 percent, and for the rest types of products — up to 80 percent of the quantity defined by planned targets for a year preceding the planned one.

Development of Economic Management Methods and Incentives

10. To enhance the role of foreign economic links, the combination of centralised planning and encouragement of initiative and economic autonomy of enterprises, associations and organisations, bearing in mind to ensure on this basis an increase in currency earnings, and a thrifty use of foreign currency.

Ministries and departments of the USSR, the Councils of Ministers of Union Republics, enterprises, associations and organisations should proceed from the premise that the meeting of their import requirments should hinge on their activity to boost export.

11. The USSR State Planning Committee and the USSR State Committee for Supply should develop jointly with the Ministry of Foreign Economic Relations of the USSR and with participation of ministries and departments of the USSR and the Council of Ministers of Union Republics, within a three month term, and endorse the procedure for drafting plans of foreign economic activity, including at the level of sectors and enterprises, being mindful of the need to boost in every way export, improve its structure, enhanced efficiency, reduce import dependence, slash the Soviet Union's currency debt, and unconditionally fulfil the commitments assumed. This work should be taken into account in preparing methodical reccmmendations for drafting state plans of the USSR's economic and social development.

12. To expand the USSR's involvement in the international division of labour, deepen integrative processes, specially in practising new forms of cooperation, enhance the realistic nature of the evaluation of export and import efficiency, it is envisioned starting from January 1, 1991 to use a new currency rate in foreign business transactions.

The USSR State Bank, the USSR Ministry of Finance, the USSR State Planning Committee, and the USSR Bank for Foreign Economic Activities (Vneshekonombank) should work out and present to the USSR Council of Ministers before the end of 1989 specific proposals for a size, procedure of setting and using the currency rate.

The USSR Ministry of Finance, the USSR State Planning Committee, the USSR State Committee for Labour and Social Issues, and the All-Union Central Council of Trade Unions, in working out proposals for upgrading the system to levy taxes on profits (revenue) of state, cooperative and public service associations, enterprises and organisations, should proceed from the need to take into account, in differentiating tax rates, economic results of their export-import transactions.

13. It was recognised as necessary to simplify the existing settlements system in carrying out export-import operations of state enterprises, associations and organisations, gradually dispensing with differentiated currency coefficients in converting actual contract prices into Soviet roubles.

Prior to switching over to settlements using the new currency rate, to use starting from January 1, 1990 a 100 percent addition to the ratio between freely convertible currency and the rouble rate.

14. To enhance economic incentive and responsibility, increase autonomy in conducting export-import operations, it was established that currency will accrue, starting from the first quarter of 1989, to the accounts of state and public service enterprises, associations and organisations from the export of goods (work, services) as payments from a foreign customer are received. The currency earnings of production cooperatives engaged in foreign economic activity are deposited in their accounts after deductions are made to the state under the fixed norms, in the same way.

The Soviet Vneshekonombank should determine, in agreement with the USSR Ministry of Finance, the procedure for putting foreign currency earnings into accounts of enterprises, associations, production cooperatives and other organisations, and make respective changes in the existing procedure of crediting export-import operations and settlements with state budget.

15. Norms of deductions to the state for 1988—1990, including deductions to Councils of Ministers of Union Republics, from foreign currency revenues have been set for production cooperatives acting independently proceeding from the norms of foreign currency deductions established for enterprises, associations and organisations of the local industry and republican ministries and organisations.

Cooperatives can form their foreign currency funds on the basis of foreign currency drawn from bank accounts of members of the cooperatives.

If cooperatives are organised at state, cooperative or other public-owned enterprises, organisations and institutions, deductions from the cooperatives' foreign currency revenues to the state, including deductions to ministries, USSR organisations or Councils of Ministers of Union Republics to which the enterprises, organisations and institutions are subordinate, are made proceeding from the norms of foreign currency deductions established for the above-mentioned enterprises, organisations and institutions.

16. With a view to developing socialist initiative of enterprises, associations, production cooperatives and other organisations, and expanding their potential in using foreign currency for implementing socio-economic tasks facing their labour collectives, a free exchange of the recources of currency funds, the selling and purchasing of foreign currency in Soviet roubles at coordinated prices at foreign currency auctions organised by the USSR Bank for Foreign Economic Relations (Vneshekonombank) will be introduced.

The USSR State Bank together with the USSR Ministry of Finance, as well as the USSR Vneshekonombank and the USSR State Planning Committee were asigned the task to work out a system of selling and purchasing foreign currency at the auctions, using for this purpose the resources of exporters' foreign currency funds in all types of currency, as well as transferable roubles coming from centralised sources.

17. The USSR Vneshekonombank will be allowed to grant foreign currency credits to enterprises, associations, production cooperatives as so on to the sum of up to 5 million roubles. They will be repaid through the use of all the foreign currency revenues coming from the export of the goods and services for which the credits were granted. Limits to the resources allocated for this purpose will be set to the USSR State Planning Committee every year.

18. With a view to promoting the development in the USSR of a wholesale trade market for the means of production in transferable roubles, the USSR State Planning Committee, the USSR State Committee for Supply, the USSR State Committee for Computer Facilities and Information Science, the USSR State Committee for Physical Culture and Sports, the USSR Ministry of Public Health and the USSR Ministry of Trade were instructed to proceed from the assumption that the cost of goods sent annually for marketing within the wholesale trade system should exceed the volume of resources in transferable roubles in the foreign currency funds of enterprises, associations, production cooperatives and other organisations, as well as USSR ministries and departments, Council of Ministers of Union Republics.

Export products of enterprises, associations, production cooperatives and other organisations will be marketed in transferable roubles within the framework of wholesale trade.

It will be allowed to invite enterprises and organisations from socialist countries to take part in the operations at the internal wholesale market of the means of production on terms of reciprocity and balanced accounting.

19. In order to ensure stable conditions for cost-accounting at enterprises, associations, production cooperatives and other institutions taking an active part in foreign economic activities, it will be necessary to create a system of insurance of Soviet exporters' commercial risk when the latter conduct operations at foreign markets.

The USSR Ministry of Finance and the USSR Ministry of Foreign Economic Relations will develop and approve the order of insuring commercial risk and will analyse a possibility of creating specialised insurance companies for this purpose.

20. Ministries and departments, enterprises, associations and organisations that engage in foreign trade have been instructed to develop bonus systems proceeding from the need for stimulating foreign trade operations, increasing the volume and nomenclature of export commodities, developing cooperation and other modern forms of interaction, promoting the conclusion of interconnected export-import deals, saving currency and reducing imports.

21. With a view to promoting the adoption of strenuous plans of the production and deliveries of export commodities additional economic incentives envisaged by the provisional rules of forming state orders for 1989 and 1990 that were approved by Resolution 889 of the USSR Council of Ministers on July 25, 1988 will be spread to all the planned export deliveries.

22. It has been established that enterprises, associations and institutions exporting finished products will deduct part of the resources of their foreign currency funds to subcontractor enterprises and institutions. The amount of the deductions will be set on a coordinated basis with due account for their contribution to the production of export commodities.

Foreign currency will be transferred to subcontractors' accounts opened at the USSR Vneshekonombank after receiving money from foreign buyers.

23. Enterprises, associations and organisations included in the systems of all-union and union-republican ministries and departments will deduct 5 percent of their foreign currency resources to the Moscow City Council, the Leningrad City Council, to the Territorial Executive Committees and the Regional Executive Committees, Council of Ministers of autonomous republics and Councils of Ministers of Union Republics not divided into regions, on whose territory the above-mentioned enterprises, accociations and organisations re located.

It has been recommended to the local government bodies of territories and regions and to the Councils of Ministers of autonomous republics to create, if need be, groups of 2 to 3 people for promoting the development of foreign economic activities of enterprises, associations, production cooperatives and other organisations situated on their territory.

24. A single quota of deductions to foreign currency funds amounting to 70 percent of revenues in all types of currency coming from the export of goods and services will be established for 1989—1990 for enterprises and associations included in the system of the USSR State Agri-Industrial Committee.

All the resolutions on those issues adopted earlier will be invalid, with the exception of those dealing with the agri-industrial complexes Kuban, Moskva, Ramenskoe, Kashirsky and Tosnensky, the agri-industrial firms Adazi, Zarya, Progress, Provesin and Shchapovo, the broiler-producing association Stavropolskoe, the agri-industrial association Novomoskovskoe, as well as their produce. The exception is valid till January 1, 1991.

25. The Moscow City Council, the Leningrad City Council, local government bodies of territories and regions, Councils of Ministers of union and autonomous republics will be given the right to spend up to 50 percent of their currency funds on the purchasing of concumer goods, medicaments, medical and environmental protection equipment; and on consolidating a material and technical basis of the social and cultural sphere.

26. Coastal and border trade shall be conducted with the use of local resources, goods allocated to constituent republics from the market fund, and raw and other materials saved by enterprises, associations and organisations directly participating in this trade, in accordance with the terms envisaged by this resolution.

All export revenue are to be spent to buy consumer goods to meet requirements of the population of border areas, as well as machines, equipment, materials and other goods.

27. The Soviet Union shall fulfil its commitments under interstate and intergovernmental agreements for the delivery of equipment and materials and rendering of engineering services, on the basis of long term state credits or free of charge, with the help of material resources to be allocated on a top priority basis and in full measure.

Applications of main suppliers (contractors) for the manufacture of products and the performance of work and services, stemming from the above-mentioned international agreements concluded by the USSR, will be accepted for fulfilment by enterprises and organisations on state order terms.

The USSR State Planning Committee, the USSR State Commitee for Material and Technical Supplies, ministries and departments of the USSR shall take this into account when calculating material balance.

28. With a view to enhancing the interest of Soviet construction and assembly organisations in buying foreign currency they have been allowed to participate in biddings for construction projects on Soviet territory, in which foreign currency is invested.

The USSR Ministry of Foreign Economic Relations has been instructed to work out, jointly with the USSR State Committee for construction and other interested ministries and departments, a procedure for holding such international biddings.

29. With a view to developing progressive cooperation forms, meeting in a fuller measure the population's demand for consumer goods through broadening the product mix, and developing exchanges of production and technical products, the USSR Council of Ministers has allowed enterprises and organisations of the USSR Tra-

de Ministry to carry out, on a balanced basis, goods-exchanging operations with organisations from socialist countries and firms from capitalists and developing countries involving consumer goods allocated to them from market funds, and enterprises and organisations of the USSR State Committee for Material and Technical Supplies to exchange allocated production and technical goods.

30. In exceptional cases, the USSR Council of Ministers allows barter operations to solve issues connected with the development of consumer goods production and other social tasks.

31. With a view to invigorating the establishment on Soviet territory of joint ventures with the participation of foreign organisations and firms, it has been established that:

— the shares of Soviet and foreign participants in a joint venture's ownership capital are fixed by agreement between them;

— a foreign citizen can be chairman of the board or director-general of a joint venture;

— fundamental issues related to the activities of a joint venture are solved at meetings of the board on the basis of unanimity of all board members;

— issues related to employment and dismissal, forms and amount of remuneration, as well as material incentives for joint venture staff workers in Soviet roubles shall be solved by a joint venture;

— goods imported by a joint venture to the Soviet Union for production needs can be imposed minimal duties on or be exempt from duties;

— foreign staff workers of joint ventures pay for the dwelling and other services in Soviet roubles except for cases envisaged by resolutions of the USSR Council of Ministers.

With a view to additionally encouraging the establishment of joint enterprises in the Far Eastern economic area, these enterprises will be exempt from profits taxes during the first three years after they get the proclaimed profits.

The USSR Ministry of Finance has been instructed to draft within three months, and approve rules for determining taxable incomes of joint ventures, taking into account foreign practice, and reduce to 10 percent the profits tax for joint ventures set up in the Far Eastern economic area.

32. The USSR Ministry of Finance has been given the right not to impose taxes, for a rertain period of time, on part of the profits due to a foreign participant in a joint venture if it is transferred abroad, or reduce this tax if an agreement between the Soviet Union and a corresponding state does not make other provisions.

This right is to be applied largely with respect to joint ventures producing consumer goods, medical equipment, medicines and high technology of big national economic importance, and joint ventures operating in the Far Eastern economic zone.

33. A transfer of one's share in a joint venture, insurance of joint venture risks, and inspections of financial and economic activities of joint ventures are carried out by mutual agreement of the sides.

34. The Chief State Customs Department under the USSR Council of Ministers, the USSR Ministry of Foreign Economic Relations and the USSR Ministry of Finance have been instructed to grant customs benefits to foreign staff workers of joint ventures.

35. State-run enterprises, accociations and organisations have been given the right to take decisions on the establishment of joint ventures, international associations and organisations with foreign organisations and firms with consent of a superior administrative body.

Production cooperatives involving foreign organisations and firms are to be set up by joint ventures, international associations and organisations with consent of, respectively, the Council of Ministers of a constituent republic which has no territorial division, the Council of Ministers of an autonomous republic, the Territorial Executive Committee, the Regional Executive Committee, the Moscow City Executive Committee, the Leningrad City Executive Committee, according to the cooperative's location, or with consent of the ministry (department) whose enterprise (organisation, institution) set up the cooperative.

If the establishment of joint ventures, international associations and organisations requires new construction or large scale reconstruction, these are carried out with consent of territorial administrative bodies.

In the other cases, Soviet participants in joint ventures, international associations and organisations provide territorial administrative bodies with corresponding information.

Direct production, scientific and technological ties with enterprises and organisations in socialist countries, as well as coastal and border trade with corresponding countries are carried out by production cooperatives with consent of, and in a procedure determined by, the Council of Ministers of a constituent republic which has no terrotorial division, the Council of Ministers of an autonomous republic, the Territorial Executive Committee, the Regional Executive Committee, the Moscow City Executive Committee, the Leningrad City Executive Committee (according to the cooperative's location), with account taken of rules for implementing such ties.

The USSR Chamber of Commerce and Industry has been instructed to submit within three months, jointly with the USSR Foreign Ministry and the Ministry of Foreign Economic Relations and in the established procedure, proposals for direct economic relations between enterprises, associations, production cooperatives and other organisations of the Far Eastern economic area with firms and organisations of countries of the Asia-Pacific region.

The USSR Chamber of Commerce and Industry has been instructed to organise international biddings, starting from 1989, with the participation of interested enterprises, associations, organisations, ministries and departments for attracting, on a competitive basis, foreign organisations and firms as well as Soviet enterprises, associations, production cooperatives and other organisations for participation in cooperation projects in the Far Eastern economic area.

Some Issues of Foreign Economic Activities

36. The State Foreign Economic Commission under the USSR Council of Ministers has been instructed to constantly analyse, jointly with the USSR State Planning Committee, the USSR State Committee for Science and Technology and the USSR Academy of Sciences, modern problems of the development of world economic ties and their interactoon with the Soviet economy, integrate the planned nature of the development of the Soviet economy and the use of commodity-money relations in the foreign economic sphere, and deepen joint activities with foreign firms, banks and organisations in accordance with the strategy of the development of Soviet foreign economic ties.

The Far Eastern branch of the Soviet Academy of Sciences has been instructed to analyse implementation of a long term state programme for a comprehensive development of productive forces of the Far Eastern economic area, the Buryat Autonomous Republic and the Chita region for the period ending in 2000 as regards export orientation of economic complexes of the Far East and Baikal area, and organise permanent work, with the participation of interested enterprises, amalgamations, organisations, ministries, departments and execsutive committees of local Soviets of People's Deputies (government bodies), on problems of the development of foreign economic ties of those territories.

37. The USSR Ministry of Foreign Economic Ties, the USSR State Planning Committee, the USSR Finance Ministry, the Chief State Customs Department under the USSR Council of Ministers, and the USSR Ministry of Justice have been instructed to prepare, together with interested ministries and departments of the USSR and the Councils of Ministers of corresponding constituent republocs, proposals on the establishment in the USSR, above all in the Far Eastern economic area, "zones of joint enterprise" that would include joint ventures set up with foreign partners, and on a possible status and location of such zones, and submit these proposals at the USSR Council of Ministers in the first quarter of 1989.

38. The USSR State Bank, the USSR Vneshekonombank and the USSR Ministry of Finance have been instructed to prepare specific proposals on a stage-by-stage development of partial convertibility of the Soviet rouble into foreign currencies and submit these proposals at the USSR Counril of Ministers in the first quarter of 1989.

39. The USSR State Planning Committee, the USSR Ministry of Finance, the USSR State Bank and the USSR Vneshekonombank

have been instructed to submit proposals for improving the pattern of the summary currency plan (balance of payments of the USSR) at the USSR Council of Ministers in the first quarter of 1989.

40. Provision of this resolution, applying to production cooperatives, are applied also to all cooperatives engaged in production activities and their unions (associations).

41. Ministries and departments of the USSR have been instructed to amend corresponding departmental standard acts, instructions and methodical directions to bring them into line with the present resolution.

The USSR Ministry of Foreign Economic Relations and the USSR Ministry of Justice have been instructed to prepare, jointly with the USSR State Planning Committee, the USSR State Committee for Material and Technical Supplies, the USSR Ministry of Finance, the USSR State Bank, the USSR Vneshekonombank and other interested ministries and departments, proposals on amending existing laws to bring them into line with the present resolution and submit these proposals at the USSR Council of Ministers within two months.

Заказ № 151
Тираж 3000 экз.
Объем 1,0 п. л.

Типография ПК ТПП СССР

DRAFT OF LAW ON PATENTS, INVENTIONS

JPRS-UST-89-003
23 February 1989

Draft of Law on Patents, Inventions

18140109 Moscow PRAVDA in Russian
27 Dec 88 pp 1, 2, 3

[Decree of the Presidium of the USSR Supreme Soviet of 23 December 1988 "On the Draft of the USSR Law on Inventive Activity in the USSR" and text of the draft of "The Law of the Union of Soviet Socialist Republics on Inventive Activity in the USSR"]

[Text] Decree of the Presidium of the USSR Supreme Soviet "On the Draft of the USSR Law on Inventive Activity in the USSR"

The Presidium of the USSR Supreme Soviet **resolves:**

1. To publish the draft of the USSR Law on Inventive Activity in the USSR, which has been submitted to the USSR Supreme Soviet by the USSR Council of Ministers, in the newspapers IZVESTIYA SOVETOV NARODNYKH DEPUTATOV SSSR, PRAVDA, SOTSIALISTICHESKAYA INDUSTRIYA, TRUD, and EKONOMICHESKAYA GAZETA and in republic newspapers for national discussion.

2. To commission the USSR Council of Ministers to consider the proposals and remarks on the draft of the USSR Law on Inventive Activity in the USSR, which were received during the national discussion, to make in the draft the necessary corrections and additions, and by 15 March 1989 to submit it to the Presidium of the USSR Supreme Soviet.

To deem it expedient to submit the completed draft of the USSR Law for the conclusion of the standing commissions of the Council of the Union and the Council of Nationalities.

[Signed] Chairman of the Presidium of the USSR Supreme Soviet M. Gorbachev

Secretary of the Presidium of the USSR Supreme Soviet T. Menteshashvili

Moscow, the Kremlin. 23 December 1988

Draft: The Law of the Union of Soviet Socialist Republics on Inventive Activity in the USSR

This Law in conformity with the USSR Constitution specifies the economic, organizational, and legal conditions of inventive activity in the USSR and ensures its orientation toward the development of equipment and technology, which are fundamentally new and are competitive on the world market.

Invention activity serves as a source of the most advanced technical solutions, which revolutionize social production and raise it to a higher scientific and technical level, and is one of the main motive forces of economic and social progress, which leads to the steady increase of the well-being of the Soviet people, the strengthening of the defensive capability of the country, and the increase of its economic independence.

The political and economic systems of the USSR guarantee USSR citizens the freedom of creative scientific and technical work and create the conditions for the harmonious combination of the interests of inventors, labor collectives, and society and the strict observance of the principle of social justice in the area of invention.

The Law is aimed at the increase of the economic interest of enterprises (associations), institutions, organizations, and their labor collectives in the development and use of inventions and envisages steps of the moral and material stimulation of the participants in creative scientific and technical work.

The Law develops the democratic principles in the relations between the participants in inventive activity and guarantees the observance of their rights and creative and economic interests.

I. Inventive Activity in the USSR

Article 1. The Role of Inventive Activity in the Development of the Socialist Economy

1. Under the conditions of the scientific and technical revolution, the development of commodity-money relations, the extensive use of economic methods of the management of the national economy, and the functioning of state and cooperation enterprises on the principles of full cost accounting and self-financing, invention is becoming one of the most important factors of the increase of the efficiency of the socialist economy.

2. Invention holds a leading position in the sphere of creative scientific and technical work, ensures the extensive use of the achievements of science in production and the improvement of equipment and technology, and is an efficient form of the inclusion of the labor of scientists, engineering and technical personnel, and production innovators in the accomplishment of the priority tasks of the acceleration of the socioeconomic development of Soviet society.

3. The state aids in every possible way the development of invention. The creative activity of inventors is honorable, their contribution to social production enjoys universal recognition.

4. The state on the basis of the democratization of social relations implements goal-oriented steps on the stimulation of inventive activity and promotes the display and comprehensive use of the creative potentials of inventors in the development of the productive forces of socialist society, in the modernization of the structure and the improvement of the organization of production, in the increase of labor productivity in the national economy, and in the assurance of high consumer properties of the

goods, works, and services, which are made available to the population, and the competitive ability of Soviet equipment and technology on the world market.

Article 2. The Enterprise Is the Basic Unit in the Organization of Inventive Activity

1. The state, cooperative, and other enterprise, institution, and organization (hereinafter called "the enterprise") create the necessary conditions for the development of creative inventive work and the use of inventions in production. The enterprise involves the members of the labor collective in inventive activity, carries out under the conditions of socialist competition the search for highly effective technical solutions and the sharing of the experience of inventive activity, and performs patent and license work.

2. Inventors directly or through their public organizations participate in the settlement of all questions, which are connected with the organization and carrying out of inventive activity at the enterprise. They should be represented in the council of the labor collective of the enterprise and in the scientific and technical or technical and economic council.

3. The administration of the enterprise in consultation with the trade union committee can establish for the inventor an individual work routine for the development of an invention and its preparation for use in production.

The indicated routine finds expression in a special work schedule, the granting of creative leave, and the supply of the necessary equipment, tools, materials, and information.

The enterprise has the right to introduce for inventors special positions for the period of work on an invention with their release from the basic job and with the remuneration of labor in an amount that is not less than the average wage which they received earlier.

In case of the reduction of the number of personnel of the enterprise the authors of inventions, which have been used at this enterprise, have the preference to be kept on the job.

4. The administration uses effective methods of the organization of inventive activity, particularly by the formulation of technical solutions on a competitive basis and the establishment for these purposes of temporary collectives.

5. The administration and the labor collective of the enterprise are obliged to observe strictly the rights and legal interests of inventors.

6. For the increase of the efficiency of the work, which is connected with inventive activity, the administration of the enterprise gives the utmost assistance to the patent subdivisions and the public organizations of inventors.

Article 3. The Role of Organs of State Management in the Development of Inventive Activity

1. The USSR State Committee for Science and Technology is the statewide organ which is in charge of the work on the development of inventive activity in the country.

The USSR State Committee for Science and Technology ensures the utmost development of the creative scientific and technical work of the working people and the monitoring of the large-scale use in production of inventions which are of great national economic importance.

The State Committee for Inventions and Discoveries attached to the USSR State Committee for Science and Technology (Goskomizobreteniy) carries out the examination of the applications for inventions, the issuing of patents, and their registration, gives procedural assistance to the patent services of ministries, departments, and enterprises, ensures the training of patent experts, and performs patent information work.

2. The USSR State Planning Committee and other central economic organs when formulating the plans of the economic and social development of the country envisage organizational and economic measures, which are aimed at the creation of the conditions for the development of inventive activity and the implementation of its results in the national economy, and ensure on the basis of state orders for the development of new equipment and technology the extensive use in the national economy of important inventions of an intersectorial nature.

3. USSR ministries and departments and the Councils of Ministers of the union republics when formulating and implementing technical policy, by actively using economic levers and stimuli, aim inventive activity in the sectors and national economy of the republics at the solution of important priority problems and at the development of fundamentally new types of products and technology; establish in necessary cases special scientific and technical, introducing, and production enterprises and temporary collectives for the development and assimilation on the basis of the most promising inventions of new industrial production, as well as make available to subordinate enterprises the necessary financial, material, and technical resources from centralized funds.

Article 4. The Functions of the Soviets of People's Deputies in the Area of Invention

1. The Soviets of People's Deputies within their powers aid the development at the enterprises, which are located in the corresponding region, of inventive activity on the accomplishment of the most important tasks of the

improvement of the production and social infrastructure, environmental protection, the output of high quality consumer goods, and the provision of services to the population.

2. The Soviets of People's Deputies create the conditions for the extensive development of invention, promote the independent creative technical work of the population by making available the necessary premises, physical assets and equipment, information supply, and other services, and organize the dissemination of advanced experience of inventive activity in the country.

3. The Soviets of People's Deputies perform mass organizational work, which is aimed at the technical improvement of production on the basis of inventions, examine the results of the use of inventions in the national economy of the region, take effective steps on the increase of the prestige of the creative work of inventors and their social status in society, and enlist inventors in the active work of the permanent deputy commissions and other organs of the Soviet, which are in charge of industry, construction, transportation, agriculture, and consumer service.

4. The Soviets of People's Deputies carry out the monitoring of the observance of the legislation on inventive activity in the region and given assistance to inventors in the realization of their rights and legal interests.

Article 5. Public Organizations and Invention

1. The work on the development of mass invention is carried out with the extensive participation of trade union, Komsomol, and other public organizations in conformity with their charters (statutes).

2. The public organizations of inventors, the engineering and scientific and technical societies of the USSR, as well as other public organizations, which are connected with the development of inventive activity in the USSR, give inventors organizational, material, and other support, carry out the sharing of experience and the promotion of the achievements in inventive activity, give assistance to the state in the protection of the rights and legal interests of inventors, and can establish cost accounting introducing enterprises, organizations, and groups and temporary creative collectives.

II. The Invention and Its Legal Protection

Article 6. The Concept of an Invention

1. The technical solution of a problem, which has novelty, an unobvious nature, and production applicability, is recognized as an invention.

2. A technical solution has novelty, if its essence on the date of priority of the application is not known from previous level of equipment and technology.

3. A technical solution is unobvious, if its essence does not follow in an apparent manner from the level of equipment, which is known for the specialist in this area.

4. A technical solution has production applicability, if it can be used in the national economy of the country at the moment of its development or in the future.

5. A device, a method (including microbiological, as well as methods of treatment, diagnosis, and prevention), a substance (including chemical and medicinal), a strain of a microorganism, as well as the use of a previously known device, method, substance, and strain of a microorganism for a new purpose can be the objects of inventions.

6. There are not recognized as inventions:

— scientific theories;
— methods of the organization and management of the economy;
— symbols, schedules, and rules;
— diagrams, rules, and methods of the performance of mental operations;
— algorithms and programs for computers;
— designs and diagrams of the layout of structures, buildings, and territories;
— proposals, which concern only the appearance of items and are aimed at the meeting of esthetic needs;
— other solutions, which do not meet the requirements stipulated by paragraph 1 of this article.

7. Inventions, which pertain to the defensive capability of the USSR, are considered secret. In accordance with established procedure other inventions can been recognized as secret, if they affect special state interests of the country.

Article 7. Authorship to an Invention

1. The right of authorship to an invention belongs to the citizen who developed the invention.

2. If several citizens jointly participated in the development of an invention, they are all considered the coauthors of such an invention.

3. Citizens, who did not make their own direct creative contribution to the development of an invention and who gave the author only technical, consultative, organizational, or material assistance or contributed to the official registration of the rights to an invention and to the use of the invention in production, are not recognized as coauthors.

4. The procedure of exercising the rights, which belong to the coauthors of an invention jointly, is specified by their agreement. Organs of state power and management, enterprises, organizations, and officials cannot interfere in the execution of the rights by the coauthors of an invention.

5. The right of authorship to an invention is a permanent and inalienable personal right.

Article 8. The Legal Protection of an Invention

1. The right to an invention is protected by the state and is certified by a patent.

2. The patent for an invention certifies the recognition of the claimed technical solution as an invention, the authorship to the invention, the priority of the invention, and the exclusive right to the use of the invention.

3. The patent for an invention is valid for 20 years, counting from the date of receipt of the properly drawn up application by the State Committee for Inventions and Discoveries.

4. The legal protection, which is granted by the patent, applies only to what is stipulated by the formula of the invention. The description and drawings serve only the purpose of interpreting the formula of the invention.

5. The force of a patent, which has been issued for a method of obtaining a product, also applies to the product which is directly produced by this method.

Here the product is considered to have been obtained by the patented method in the absence of evidence to the contrary.

6. Legal protection as inventions is not granted to solutions, which are at variance with public interests, the principles of humaneness, and socialist morality.

7. The legal protection of new strains of plants and breeds of animals, which have been obtained primarily by a biological method, is accomplished by special legislation.

Article 9. The Exclusive Right to the Use of an Invention

1. The exclusive right to the use of an invention belongs to the patent owner.

2. The exclusive right to the use of an invention grants the patent owner the right to use the invention at his own discretion, as well as the right to prohibit the use of the invention in cases which are at variance with this Law.

Article 10. Actions Which Are Not Recognizable as a Violation of the Exclusive Right to the Use of an Invention

There is not recognized as a violation of the exclusive right to the use of an invention:

— the use of means, which contain inventions that are protected by patents, on board marine or river vessels of other countries, in the hull of a vessel, in machines, rigging, mechanisms, and other equipment, when these vessels are temporarily or accidentally in USSR waters, on the condition that the indicated means are used exclusively for the needs of the vessel;

— the use of means, which contain inventions that are protected by patents, in the design or during the operation of air, space, and ground means of transportation of other countries or auxiliary equipment for these means, when the indicated means of transportation are temporarily or accidentally on USSR territory.

The indicated actions are not recognized as a violation of the exclusive right to the use of an invention, if the marine or river vessels, the air, space, or ground means of transportation belong to natural or juridical persons of countries which grant the same rights to USSR citizens and Soviet juridical persons.

Article 11. The Right of Prior Use

Any person, who before the date of priority of an invention, which is protected by a patent, and independently of its owner used a solution, which is identical to the invention, or made preparations necessary for this, retains the right to its subsequent free use.

Article 12. The Patent Owner

1. The patent for an invention is issued to:

— the author of the invention;

— the natural or juridical person (on the condition of his consent), who will be indicated by the author of the invention as the patent owner in the application for the obtaining of the patent or in the declaration, which has been submitted to the State Committee for Inventions and Discoveries at any time before the entry of the invention in the USSR State Register of Inventions;

— the legal successor of the author of the invention in conformity with the legislation on inheritance;

— the USSR State Patent Fund, if the exclusive right to the use of the invention is transferred in accordance with established procedure by the author or the patent owner to the state.

2. The patent for an invention is issued jointly to the author and the enterprise (public organization), if the invention was developed by the author during the period of his work at the enterprise (public organization) and the activity of the author in conformity with the assignment issued to him was aimed, as follows from the

documentation of the enterprise (public organization), at the solution of precisely the technical problem, the elaboration of which concluded with the development of the invention.

3. The patent for an invention is issued to the enterprise (public organization), if the appropriate contract has been concluded between the author and the enterprise (public organization).

The contract along with the cession of the right to the obtaining of a patent specifies the duties of the enterprise (public organization) on the creation of the conditions of a material, production, and social nature, which are necessary for the effective creative activity of the author, and on the payment of a reward for the use of development inventions.

Article 13. The Application for the Issuing of a Patent for an Invention

1. The application for the issuing of a patent for an invention (hereinafter called "the application for an invention") is submitted to the State Committee for Patents and Inventions by:

— the author of the invention;

— the enterprise (public organization) and the author of the invention jointly if the conditions stipulated by paragraph 2 of Article 12 of this Law are present;

— the enterprise (public organization) if the conditions stipulated by paragraph 3 of Article 12 of this Law are present;

— the natural or juridical person, to whom the author, the enterprise (public organization), or the author and the enterprise (public organization) jointly will transfer in accordance with established procedure their right to the submission of an application.

2. If the conditions stipulated by paragraph 2 of Article 12 of this Law are present, the administration of the enterprise (public organization) within 3 months from the date of its notification by the author about the invention developed by him does not submit the application for an invention, the author has the right to submit the application independently, without the indication in it of the enterprise (public organization) as the patent owner. The enterprise (public organization) loses in this case the right of the patent owner.

3. The enterprise (public organization), if the conditions stipulated by paragraph 2 of Article 12 are present, has the right to submit an application for the receipt of a patent in its own name, if within 3 months from the date of the appearance of the developed invention the author, having been notified of this, renounces the right to the ownership of the patent or else does not take the actions, which are necessary for the drawing up of the application for the receipt of a patent jointly with the enterprise (public organization).

4. Foreign citizens and persons without citizenship, who live outside the USSR, or foreign organizations, which have a permanent location in foreign countries, or their patent agents conduct in the USSR business on the receipt of patents for inventions and their keeping in force through the USSR Chamber of Commerce and Industry and other Soviet patent agents.

5. The application for an invention should pertain to one invention or to a group of inventions, which are so interconnected that they form a single inventive idea.

6. The application for an invention should include:

— a request for the issuing of a patent;
— a description and the formula of the invention;
— drawings and other explanatory materials, if they are necessary;
— an abstract.

7. In case of the submission of an application for a secret invention the author and the enterprise (public organization) are obliged to take the necessary steps so that its content would not be divulged.

Article 14. The Transfer of the Right to Submit an Application for an Invention, the Cession of a Patent and the Rights, Which Follow From the Patent

The right to submit an application for an invention, a patent, and the property rights, which follow from the patent, can be transferred by the author, the enterprise, or the public organization to any citizens or juridical persons.

Article 15. The Priority of an Invention

1. The priority of an invention is established in accordance with the date of receipt of the properly drawn up application for an invention by the State Committee for Inventions and Discoveries.

2. If the dates of receipt of the applications coincide, all the authors mentioned in them are regarded as the joint authors.

3. The priority of an invention can be established according to the day of the submission of the application for the invention in foreign countries (convention priority), if the application for the invention was received by the State Committee for Inventions and Discoveries no later than 12 months from the date of the submission of the first application in the foreign country which is a party to the Paris Convention on the Protection of Industrial Property. The applicant, who wishes to avail himself of convention priority, is obliged to indicate this in the

application for the invention and no later than 3 months from the day of its submission to present to the State Committee for Inventions and Discoveries the necessary documents which confirm the legitimacy of such a demand.

Article 16. Exemptions With Regard to the Novelty of an Invention

There are not recognized as circumstances which discredit the novelty of an invention:

- the open display of an invention at exhibits, which are located at official and officially recognized internal exhibitions which have been organized on the territory of one of the countries which are parties to the Paris Convention on the Protection of Industrial Property, if the application for the invention is submitted in a 6-month period from the day of the placement of the exhibit at the exhibition;
- the revelation of the essence of the invention to third parties, as well as the use of the invention, if the application for it is submitted no later than 12 months from the day of the commission of these actions.

Article 17. The Publication of the Application for an Invention

Information on the application for an invention, including a brief description and the formula of the invention, is published by the State Committee for Inventions and Discoveries in an official bulletin 18 months after the date of the submission of the application for the invention. After the publication of the indicated information any person has the right to familiarize himself with the materials of the application for the invention.

Article 18. The Examination of the Application for an Invention

1. The examination of the application for a parent is made by the State Committee for Inventions and Discoveries in cooperation with the applicant by the making of a preliminary examination and a patent examination.

The examination of the application for a secret invention is carried out in accordance with the procedure specified by the USSR Council of Ministers.

2. The applicant and the author of the invention can personally participate in the preliminary examination and the patent examination.

3. The state patent expert, which carries out the examination of the application for an invention, bears responsibility, which is established by legislation, for the demanding and obtaining of additional materials for the application for an invention, which are not required when making the examination, for the validity of the proposed decision, for the observance of the deadline of the consideration of the application, as well as for the divulgence of its content.

4. During the period of the making of the examination of the application for an invention the applicant has the right on his own initiative to supplement and correct the materials of the application within the stated formula of the invention.

If the additional materials change the essence of the claimed technical solution, they are not accepted for consideration and can be drawn up by the applicant as an independent application with the establishment of priority in accordance with the date of their receipt by the State Committee for Inventions and Discoveries.

5. The making of the preliminary examination and the patent examination is not halted, if a dispute on the authorship to the claimed technical solution is being considered in a court. The decision on the issuing of a patent for an invention, with respect to which a dispute on authorship has been instituted, is made only after the decision of the court, which specifies the author of the invention, has come into legal force.

Article 19. The Preliminary Examination of the Application for an Invention

1. The preliminary examination of the application for an invention is made within a month from the day of its receipt by the State Committee for Inventions and Discoveries. The observance of the formal demands, which are made on the application, is verified during the making of the examination.

2. The applicant, if necessary, can be ordered to make refinements in the application within 2 months after the receipt by him of the request of the state patent expert. In this case the period for the making of the examination is accordingly extended.

If the applicant has violated the set deadline or has ignored the indicated request, the application for an invention is considered rejected as is not published.

3. In case of a positive result of the preliminary examination the applicant after publication of the information on the application is granted temporary legal protection of the claimed invention for a term of not more than 4 years from the date of receipt of the properly drawn up application by the State Committee for Inventions and Discoveries.

Article 20. The Patent Examination of the Application for an Invention

1. The patent examination of the application for an invention is made on the demand of the applicant, the author, or a third party after publication of the information on the application for an invention and should begin no later than the expiration date of the effect of temporary legal protection.

The patent examination can be started on the demand of the author or the application and prior to the publication of the application.

2. During the examination the condition of patentability of the invention are verified.

The level of technology as applied to the claimed invention is determined on the date of its priority in accordance with all types of published information or information reported by another official means to third parties in the USSR and foreign countries, which reveals the essence of the invention which is contained in the application.

3. The state patent expert has the right on his own initiative to request from the applicant additional materials which specify the essence of the invention, if the consideration of the application is impossible without them.

The additional materials, which specify the essence of the invention, should be submitted by the applicant within a 2-month period from the date of receipt of the application.

If the applicant has violated the indicated deadline or has ignored the request, the application for an invention is considered rejected.

4. The examination should be completed no later than 12 months from the date of the making by the applicant of an application for its conducting. The time of the making of an examination for the most complex applications for an invention can be extended by a decision of the Higher Appellate Council of Patent Examination attached to the USSR State Committee for Science and Technology, but by no more than a year.

5. In accordance with the results of the examination the State Committee for Inventions and Discoveries makes a decision on the issuing of or the refusal to issue a patent.

6. The applicant and the author of the invention have the right to familiarize themselves with the materials that are used when making the examination.

Article 21. The Appealing of the Decision on the Application for an Invention

1. In case of disagreement with the decision on the refusal to issue a patent or with the formula of the invention, which is indicated in the decision on the issuing of a patent, the applicant (author) has the right within a 3-month period from the day of receipt of the decision or the copies requested by him of the materials, which were opposed to the application, to submit to the Higher Appellate Council of Patent Examination attached to the USSR State Committee for Science and Technology a justified objection. The objection should be considered within a 3-month period from the day of its receipt. The applicant (author) has the right to participate in the consideration of his complaint.

2. The decision of the Higher Appellate Council of Patent Examination attached to the USSR State Committee for Science and Technology can be appealed by the applicant (author) of the invention to the USSR Patent Court within 1 year from the day of its making.

Article 22. The Publication of Information on the Issuing of a Patent

The official publication of information on the issuing of a patent is carried out by the State Committee for Inventions and Discoveries within a 3-month period from the date of the making of the decision. The author of the invention, the patent owner, the name and formula of the invention, and other necessary information, which is determined by the State Committee for Inventions and Discoveries, is indicated in the published information on the issuing of a patent.

Article 23. The Protest Against the Decision on the Issuing of a Patent

Any natural or juridical person within 3 months from the date of the official publication of information on the issuing of a patent has the right to protest it to the Higher Appellate Council of Patent Examination attached to the USSR State Committee for Science and Technology.

The protest should be considered within 3 months from the date of its receipt. The person, who sent the protest, and the applicant (author) of the invention can personally participate in the consideration of the protest.

Article 24. The Issuing of a Patent

1. In the absence of protests against the decision on the issuing of a patent in the time, which is set by Article 23 of this Law, the State Committee for Inventions and Discoveries enters the invention in the USSR State Register of Inventions and carries out the issuing of a patent.

2. In case of the receipt by the Higher Appellate Council of Patent Examination attached to the USSR State Committee for Science and Technology of a protest against the decision on the issuing of a patent the entry of the invention in the USSR State Register of Inventions and the issuing of a patent are carried out after the consideration of the protest.

Article 25. The Recognition of a Patent as Completely or Partially Invalid

The patent for an invention over the entire term of its effect can be disputed and recognized as completely or partially invalid in cases of:

— the illegitimate issuing of the patent as a result of the violation of the requirements which are established by this Law for the recognition of a claimed technical solution as an invention;

— the improper indication in the patent of the author (joint authors) of the invention or the patent owner.

Article 26. Duties

1. Duties are levied for the acceptance of an application for the receipt of a patent for consideration, for the making of an examination, for the issuing of a patent, for its keeping in force, as well as for the taking of other legally significant actions which are connected with the patent.

2. The duties are paid by the applicant, the patent owner, as well as any natural or juridical person, who is interested in taking the actions which are stipulated by paragraph 1 of this article.

3. The list of actions, for the taking of which duties are levied, the amounts of the duties, and the preferences on duties are established by the USSR Council of Ministers.

4. By agreement with the author of the invention enterprises (public organizations) and citizens can pay the duties in full or in part.

5. In instances, when the patent has been issued in the name of the USSR State Patent Fund, duties are not paid for its issuing and keeping in force, as well as for the taking subsequently of other legally significant actions. The expenses, which have been incurred by the author of the invention in connection with the payment of duties for the taking of legal actions prior to the issuing of the patent, are reimbursed to him by the USSR State Patent Fund.

Article 27. The Early Termination of a Patent

A patent is terminated ahead of time:

— on the basis of the statement of the patent owner, which has been submitted to the State Committee for Inventions and Discoveries;

— in case of the nonpayment on the set date of the annual duty for keeping the patent in force. In this case the patent can be transferred without compensation in accordance with established procedure to the USSR State Patent Fund at its request;

— in case of the recognition of the patent as invalid.

Article 28. The Patenting of an Invention in Foreign Countries

1. A USSR citizen, a Soviet enterprise (public organization), and the USSR State Patent Fund have the right to patent an invention in foreign countries, with the exception of instances when such an action may do harm to the interests of the security of the state.

2. The applicant bears the expenses which are connected with the patenting of an invention in foreign countries. Credit in transferable rubles or foreign currency can be issued by the USSR Foreign Economic Bank to the applicant for their payment.

III. The Economic Mechanism of the Use of Inventions in the National Economy

Article 29. The Economic Bases of the Use of Inventions

The economic bases of the use of inventions in the national economy are:

— the recognition of the patent for an invention and the property rights, which follow from it, as a commodity;

— the extension of cost accounting relations to the participants in the use of an invention;

— the use of economic levers and stimuli for the purpose of increasing the mutual interest of inventors, enterprises, and society in the extensive use of inventions in the national economy of the country.

Article 30. The Use of an Invention

1. The production, use, importation, offering for sale, sale, and any introduction in economic circulation of a product, which has been produced on the basis of a patented invention, as well as the use of a method, which is protected by a patent, are recognized as the use of an invention.

2. No one can use an invention, for which a patent has been issued, without the consent of the patent owner.

The patent owner should exercise the rights, which are granted by the patent, without detriment to the interests of the state and society.

If an invention is secret, the rights of the patent owner to its use can in accordance with established procedure be restricted within the limits that are necessary for the assurance of the conditions of secrecy.

3. The interrelations with regard to the use of an invention, the patent for which in conformity with Articles 7 and 12 of this Law belongs to several persons, including

on the distribution of the reward or profit (revenue), are governed by the agreement between them. In the absence of an agreement each one has the right to use the invention at his own discretion, except for the granting of a full or exclusive license, as well as the cession of the patent.

4. The use of an invention, the patent for which has been issued in the name of the USSR Patent Fund, is carried out by USSR citizens and Soviet enterprises (public organizations) without special permission.

5. The transfer to foreign natural or juridical persons of the right to use an invention, the patent for which was obtained in the USSR and belongs to a USSR citizen, a Soviet enterprise (public organization), or the USSR State Patent Fund, is carried out in accordance with the procedure specified by the USSR Council of Ministers.

Article 31. The License Agreement

1. In accordance with the license agreement the patent owner (the licensor) binds himself to transfer the right to use an invention in the form of a full, exclusive, or simple license to another person (the licensee), while the other person (the licensee) assumes the obligation to use this invention and to make to the licensor the payments which are stipulated by the agreement. The fund for the development of production, science, and technology or another fund of similar purpose serves as the source of the indicated payments, if a state enterprise acts as the licensee.

The obligation of the licensor on the performance of work and the rendering of services, which are connected with the use of the invention by the licensee, including "know-how," can by stipulated by the license agreement.

In case of the use of an invention in a plan for the performance of construction, installation, start-up and adjustment, and other operations the organization, which derives an economic impact from the use of the invention, is the licensee. The invention is included in the plan in consultation with the licensee.

If the invention is used in a scientific and technical product, which is manufactured by the organization that is the patent owner, in accordance with the agreement with the client the right to use the invention is transferred on a license basis.

2. In case of a full license all the property rights, which follow from the patent, for the term of validity of the agreement pass to the licensee; in case of an exclusive license the exclusive right to use the invention within the limits, which are stipulated by the agreement, with the retention by the licensor of the right to use the invention in the area, which is not transferable to the licensee, passes to the licensee; in case of a simple license the right to use the invention in his own production within the limits, which are stimulated by the agreement, passes to the licensee.

Article 32. The Open License

The patent owner can submit to the State Committee for Inventions and Discoveries for official publication a statement on the granting to any person of the right to use the invention (an open license). In this case the duty for keeping the patent in force is reduced by 50 percent as of the day of publication of such a statement.

The person, who has expressed the wish to use the indicated invention, is obliged to conclude with the patent owner an agreement on payments.

Article 33. Mandatory and Compulsory Licenses. The Compulsory Purchase of a Patent

1. In case of the refusal of the patent owner or the owner of a full or exclusive license to conclude an agreement on the granting of a simple license for the use of an invention to an enterprise, which needs it for the filling of a state order, the USSR State Committee for Science and Technology can make a decision on the granting to the indicated enterprise of a mandatory license with the establishment of the limits of the use of the invention and the amount, time, and procedure of payments.

2. If the use of an invention on the territory of the USSR is not properly carried out within 4 years from the day of the submitting of the application for the invention or within 3 years from the day of the issuing of the patent, upon the expiration of the longer of these terms a person, who wishes to use the invention, if it is impossible to conclude a license agreement with the patent owner, can petition the court to grant him a compulsory license with the indication of the limits of the use of the invention and the amount, time, and procedure of payments.

3. When an invention is of especially great importance for the state, but it is not possible to reach an agreement with the patent owner on the cession of the patent or the issuing of a license, by decision of the USSR Council of Ministers the patent for the invention can by purchased in a compulsory manner with the one-time payment of monetary compensation to the patent owner.

Article 34. The License for the Use of a Dependent Invention

If the patent owner cannot use an invention in connection with the fact that another invention, which has been patented by another person, is used in it, he has the right to demand of the latter the granting of a simple license for this invention.

Article 35. The Liability as to Property for the Infringement of a Patent

1. A person, who uses a patented invention in contradiction with this Law, is considered an infringer of the patent.

2. At the demand of the patent owner the infringement of the patent should be ceased with his compensation for the losses and the confiscation for his benefit of the profit (revenue), which was derived as a result of the illegal use of the invention.

If the patent was issued in the name of the author and an enterprise, the assets, which have been derived by way of compensation for the illegal use of the invention, are distributed between in the patent owners in accordance with an agreement between them.

A fine in the amount of 10 percent of the profit (the corresponding portion of the revenue), which was derived from the sale of a product which was manufactured with the use of the invention, is also collected from the infringer of the patent for the benefit of the USSR State Patent Fund.

Demands on the infringer of a patent can also be made by the owner of a full or exclusive license, if the patent owner within a 2-month period from the day of the establishment of the fact of the infringement of the patent has not taken proper steps against its infringer.

Article 36. The Use of a Technical Solution During the Period of Effect of Its Temporary Legal Protection

1. During the period of effect of temporary legal protection the applicant has the right to use the developed technical solution.

2. Natural and juridical persons, who use the technical solution, pay the patent owner monetary compensation after the obtaining of a patent for the invention. The amount of compensation is specified by an agreement of the parties.

Article 37. The Centralized Selection of Inventions

The USSR State Committee for Science and Technology annually identifies with the participation of the corresponding ministries and departments the inventions that are of great national economic importance.

The objects of new equipment and technology, in which during the corresponding planning period the selected inventions should be implemented, on the suggestion of the USSR State Committee for Science and Technology in accordance with established procedure are included in state orders.

Article 38. The Determination of the Share of the Economic Impact From the Use of an Invention

The enterprise, which produced equipment (a product) or used a technology (method), which contain an invention, with the participation of the consumer and the author (at his request) determines in its price the share of the economic impact which is obtained due to the use of this invention. This share is taken into account when making calculations of the profit (revenue) of the enterprise, which is derived from the use of the invention, when determining the amount of the reward to the authors and the bonuses to the people, who contributed to the development and use of the invention, as well as when establishing privileges with respect to taxation.

Article 39. The State Stimulation of the Use of an Invention

1. The profit (revenue) and the currency receipts, which are derived by the enterprise, which is the patent owner, from the use of the invention in its own production, is not liable to deduction for the state budget and to a superior organ for 3 years from the date of entry of the invention in the USSR State Registry of Inventions.

2. The profit (revenue) and the currency receipts, which are derived by the enterprise from the use of an invention as a result of the purchase of a license, are not liable to deduction for the state budget and to a superior organ for 3 years from the day of the conclusion of the agreement on the acquisition of the license.

3. By decision of the USSR Council of Ministers the terms, which are indicated in paragraphs 1 and 2 of this article, can be extended with respect to inventions, which are of great national economic important and require a longer time for their assimilation in production.

4. The assets, which are left at the disposal of enterprises due to the privileges with regard to deductions for the state budget and to a superior organ, which are indicated in paragraphs 1 and 2 of this article, are spent by them for the increase of the technical level of production, the social development of the enterprises, and the stimulation of inventive activity.

The indicated assets, minus the reward to the author of the invention and the bonus to the people, who contributed to its development and use, as well as the deductions for the USSR State Patent Fund, are channeled into the fund for the development of production, science, and technology, the social development fund, or other funds of a similar purpose in conformity with the economic standards of their formation.

5. Deductions for the state budget and to a superior organ are not made from the profit (revenue) and the currency receipts of the enterprise or new works, which

are specially established for the production of new equipment on the basis of a patented invention, in the portion, which was derived from the use of this invention, for 3 years from the day of the placement of the enterprise or new works into operation.

The assets, which are allocated for the establishment of such an enterprise or new works, are paid in by interested enterprises from the profit (revenue) before its distribution, while the income of USSR citizens, which is allocated for these purposes, is exempt from taxation.

6. The saving, which has been derived by a budget-carried organization from the use of inventions, as well as the revenues on license agreements for 3 years from the date of the entry of the invention in the USSR Register of Inventions or the conclusion of an agreement on the acquisition by it of a license are left entirely at the disposal of the budget-carried organization and are allocated for the development and stimulation of inventive activity.

7. Enterprises, which use inventions or carry out the preparation of production for their use, have the right to obtain bank credit on preferential terms.

Article 40. The Distribution of the Revenue of the State Enterprise From the Sale of a License

The revenue of the state enterprise from the sale of a license minus the reward to the author and the bonuses to the people, who contribute to their sale, as well as the deductions for the USSR State Patent Fund is credited to the profit (revenue) of the enterprise after the making of payments for resources and then is channeled into the state budget, is allocated to the superior organ, and is distributed among the economic funds of the enterprise in conformity with established standards.

Article 41. The State Order for the Development and Delivery of New Equipment Which Contains an Invention

1. The enterprise, which has received a state order for the development and delivery of new equipment and the placement into operation of production capacities and objects of the social sphere, which contain inventions, is supplied with the centrally distributed material, technical, and financial resources, which are necessary for the filling of the order.

2. In case of the issuing to an enterprise of a state order for the production of equipment with the use of inventions, the patents for which belong to other enterprises or citizens, as well as foreign patent owners, the state ensures the acquisition of the rights to use the inventions and the allocation of the financial assets necessary for this.

Article 42. The Financing of Inventive Activity at the Enterprise and at the Budget-Carried Organization

1. The financing of inventive activity at the enterprise, with the exception of the payment of the reward to the authors of the inventions and the bonuses to the people, who contributed to their development and use, is carried out by means of the assets of the fund for the development of production, science, and technology or other funds of similar purpose.

In case of a shortage of the corresponding assets credits of banks, assets of centralized funds, and, in necessary instances, budget allocations can be enlisted.

The budget-carried organization, which does not form economic stimulation funds, carries out the financing of inventive activity by means of the saving (revenues) from the use of inventions, which is left at its disposal in conformity with paragraph 6 of Article 39 of this Law, as well as credits of the bank, centralized funds of ministries and departments, and, in necessary instances, budget allocations.

2. The expenditures of the enterprise on the development of inventions for use in its own production, the effective impact from which does not find expression in the profit or revenue (labor safety procedures and labor safety techniques, nature conservation measures, the reduction of the sick rate, and so forth), are attributed to the production cost.

3. The assets, which are spent by the enterprise on the payment of rewards to the authors of inventions and bonuses to the people, who contributed to their development and use, are allocated from the profit (revenue) of the enterprise from the use of the invention in its own production or from the receipts from the sale of licenses prior to their distribution, are not included in the unified fund for the remuneration of labor, and are not taken into account in case of its standard formation and in case of the determination of the ratio of the increase of the average wage and labor productivity.

4. The income of citizens, which is allocated by them as contributions for the development of inventive activity at enterprises and at budget-carried organizations, is exempt from taxation.

Article 43. Regional Funds of the Financing of Inventive Activity

1. For the purposes of the financial support of the development and assimilation of objects of new equipment, which contain inventions, the Soviets of People's Deputies can establish regional funds of the financing of scientific and technical developments based on inventions.

The assets of local budgets and the contributions of enterprises, public organizations, and citizens can be the source of the formation of these funds. The indicated funds, which also operate in conformity with their charters on the conditions of full cost accounting, independently establish the procedure and conditions of the granting of credits.

2. The income of citizens, as well as the profit (revenues) of enterprises and public organizations, which are channeled by them as contributions into the regional funds of the financing of scientific and technical developments based on inventions, are not liable to taxation.

Article 44. Innovation Banks

Innovation banks are established for the promotion of the development of invention and the extensive use of scientific and technical developments and are cost accounting institutions, which carry out on a contractual basis the extension of credit to enterprises, organizations, temporary creative collectives, and individual authors for the development and use in the national economy of promising inventions. Innovation banks can share in the formation of joint works and in measures on the development and use of inventions.

Innovation banks mobilize for their credit operations the idle assets of enterprises, organizations, cooperatives, as well as individual citizens and attract on a contractual basis assets of the USSR State Bank and other banks.

Other functions, which are connected with the organization of creative scientific and technical work in the country, can be stipulated by the charters of innovation banks. The general supervision and monitoring of the activity of innovation banks are carried out by the USSR State Bank.

Article 45. The USSR State Patent Fund

1. The USSR Patent Fund is formed by means of assets of the state budget, revenues from the sale to foreign natural and juridical persons of licenses for inventions, the patents for which belong to the Fund, voluntary contributions of enterprises, public organizations, and citizens, as well as by means of the duties, which are levied in conformity with this Law, and the fines, which are exacted for the infringement of a patent.

Deductions in the amount of 1 percent of the annual profit (the corresponding part of the revenue), which has been derived by USSR citizens and Soviet enterprises and public organizations from the use of an invention, are also channeled into the USSR State Patent Fund.

2. The USSR Patent Fund in conformity with the charter, which is approved by the USSR Council of Ministers, is headed by a board. Inventors and representatives of state and public organizations are members of the board, which is elected on a democratic basis.

3. The assets of the USSR Patent Fund are used for the following purposes:

- the payment of the expenses on the development of inventions in promising directions of the development of science and technology;
- the gathering and dissemination of information on the use of inventions in the national economy;
- the promotion and development of creative technical work, the holding of all-union competitions of inventors;
- the financing of centers for instruction in creative inventive work;
- the stimulation of authors of important and promising inventions;
- the provision of material assistance to inventors in the development and verification of the technical solutions being proposed by them;
- the financing of work in the area of the improvement of the legal regulation of invention and patent affairs in the country;
- other purposes in the interests of the promotion of the development of invention.

4. The revenues of enterprises, state and public organizations, and citizens, which are channeled as contributions into the USSR Patent Fund, are not liable to taxation.

5. The USSR Patent Fund with respect to the patents, which belong to it, makes available at the request of the author of an invention information on its use.

Article 46. The Rewarding of the Author for the Use of an Invention

1. The reward to the author for the use of an invention, the patent for which has been issued in the name of a Soviet enterprise or public organization, is paid by this enterprise or public organization. In those instances, when the application for the issuing of a patent for an invention is submitted on behalf of several enterprises, the reward is paid to the author by each enterprise that uses the invention, if a different procedure is not stipulated by their agreement.

If the patent for an invention has been issued to the author and an enterprise (public association), a reward is not paid to the author; here the income of the author is formed from the portion of the profit, which was derived by the enterprise (public organization) from the use of the invention, as well as from the receipts from the sale by him independently or jointly with the enterprise of a license for this invention. In any case the income of the author should not be less than the amount of the reward, which is stipulated by this Law.

2. The reward to the author of an invention, the patent for which has been issued in the name of the USSR Patent Fund, is paid by each enterprise, public organization, or citizen, who uses the invention.

3. The enterprise, public organization, or citizen, who uses an invention, the patent for which has been issued in the name of the USSR Patent Fund, is obliged to notify it of this within 3 months from the start of the use of the invention and to conclude an agreement with the author on the payment of the reward.

4. The reward for the use of an invention during the term of effect of the patent is paid to the author in the amount of not less than 5 percent of the profit (the corresponding part of the revenue), which is derived annually by the enterprise (public organization) from its use, or the receipts from the sale of a license without the limitation of the maximum amount of the reward. The percentage is specified by the enterprise (public organization) by agreement with the author.

5. The reward for the use of an invention, the effective impact from which does not find expression in the profit or revenue, is paid by the enterprise or public organization in accordance with the procedure and in the amounts, which are established by the USSR Council of Ministers.

6. The reward is paid to the author no later than 3 months after the end of the year, during which the invention was used, and no later than 3 months after the receipts from the sale of the license have been received.

7. In case of the realization in foreign countries of an invention, the patent for which has been issued in the name of an enterprise (public organization) or the USSR Patent Fund, including in case of the sale of licenses and the delivery of products for export, the reward can be paid to the author at his request in foreign currency.

8. The administration of the enterprise or the management of the public organization can in consultation with the council of the labor collective also pay the author of the invention an incentive reward.

Article 47. The Liability for the Late Payment of the Reward

For the late payment of the reward the enterprise or public organization pays the author for each day of delay a fine in the amount of 1 percent of the sum that is due for payment.

Article 48. The Incentive for Contributing to the Development and Use of an Invention

1. The enterprise for 3 years from the date of the issuing of a patent for an invention pays the people (including people who do not work at this enterprise), who contributed to the development and use of the invention, bonuses regardless of the other types of bonus payments. The amount and the procedure of payment of the indicated bonuses are established by the administration of the enterprise in consultation with the council of the labor collective with the participation of the author. The amount of the bonuses to the managers of the enterprise is determined by the council of the labor collective.

2. The total amount of the bonus, which is paid for contributing to the development and use of an invention, should not exceed the reward which is received by the author of the invention from its use at this enterprise.

3. A bonus as if for contributing to the use of an invention is paid by the licensee to a planning organization for the use in a plan of an invention. The amount of the bonus is specified by the agreement of the planning organization and the licensee subject to the economic impact, which is specified in the plan, from the use of the invention. The bonus is paid by the licensee by means of the assets of the fund for the development of production, science, and technology or another fund of similar purpose.

The assets, which have been received from the licensee for contributing to the use of an invention, are channeled into the material incentive fund of the planning organization.

IV. The State and the Inventor

Article 49. The Rights and Privileges of Inventors

The state establishes for inventors additional privileges in the area of labor relations, the granting of living space, retirement security, and the consolidation of the social status of the inventor.

Article 50. Labor Rights

1. The author has the right to participate in the operations on the preparation of the invention for use in production (in the drafting of technical specifications, the production and testing of the prototype, the organization of production) and to carry out the author's supervision of the performance of these operations.

2. For participation in the preparation of an invention for use in production and the carrying out of author's supervision the author can be completely or partially relieved for a time from the performance of his basic job with remuneration of labor in the amount of not less than the average wage received by him, while in case of the performance of these operations outside the place of permanent work a labor contract with remuneration of labor subject to the complexity of the job being performed is concluded with the author.

3. The position, the right to leave, the right to a continuous and special length of service, and the other rights and privileges, which have been established for the place of permanent work, are reserved for the author of an invention, who has been relieved from his basic job.

If the work of the author at another enterprise lasted not less than 11 months, regular leave is granted to him at the place of this work.

4. The amount of compensation of the additional expenses of the author of an invention, which are connected with participation in the operations on the use of the invention or the carrying out of author's supervision

outside the place of his permanent residence, is established in accordance with the contract with the interested enterprise.

5. At the request of the author a note is made in his labor book on the inventions which have been used in production.

6. Disputes, which arise in connection with the exercise of the labor rights of the authors of inventions, are considered in the manner which is specified by labor legislation.

Article 51. Housing Privileges

The authors of used inventions, which are of great national economic importance, are provided with additional living space in conformity with prevailing legislation.

Article 52. Pension Benefits

The author of an invention, who is on a pension and participates in the work on the use of his invention, retains the right to receive the pension in the full amount during the entire period of this work.

The reward, which is received by the author from the use of his invention, is included in the amount of the wage, on the basis of which the pension is calculated.

Article 53. The State Stimulation of the Inventor

1. At the request of the author of an invention, which is of great national economic importance, the name of the author or a special name can be conferred on this invention by a decision of the State Committee for Inventions and Discoveries.

2. The honorary title "Honored Inventor of the USSR" can be conferred on the author of an invention, which opens a new direction in the development of science and technology, by the Presidium of the USSR Supreme Soviet upon the representation of the USSR State Committee for Science and Technology, a ministry, a department, a Council of Ministers of a union republic.

The honorary title "Honored Inventor of the Republic" can be conferred on the author of an invention, which is of great national economy importance, by the Presidium of the Supreme Soviet of a union or autonomous republic.

3. The academic degree of candidate or doctor of sciences of the corresponding type without the defense of a dissertation can be conferred on the author of an invention, the use of which made it possible to solve an important scientific and technical problem in the national economy, by the Higher Certification Commission attached to the USSR Council of Ministers upon the representation of the USSR State Committee for Science and Technology and the USSR Academy of Sciences.

4. The badge "Inventor of the USSR" is presented to the author of an invention when issuing the first patent.

Article 54. The Inheritance of the Rights of the Author of an Invention

The right to submit an application and to receive a patent for an invention, the exclusive right to use an invention, as well as the right to the reward and revenues from the use of an invention are inherited.

Article 55. The Courts Which Consider Disputes That Are Connected With Inventive Activity

Disputes, which are connected with inventive activity, are considered by:

- the people's courts;
- the judicial collegiums for civil cases of superior courts;
- patent courts—kray and oblast patent courts, the patent courts of autonomous republics, the list and territorial jurisdiction of which are established by the legislation of the union republics;
- the patent courts of the union republics;
- the USSR Patent Court.

Article 56. The Organization and Competence of the Courts Which Consider Disputes That Are Connected With Inventive Activity

1. The people's courts and the judicial collegiums for civil cases of superior courts are competent to consider disputes which are connected with inventive activity, with the exception of the categories of disputes, which are assigned to the competence of patent courts.

2. Kray and oblast patent courts, the patent courts of autonomous republics, and the patent courts of union republics, which do not have an oblast division and do not contain autonomous republics, consider as courts of the first instance the following categories of disputes:

- on the authorship (joint authorship) to an invention;
- on the establishment of the patent owner, including when the patent for an invention is issued jointly to the author and an enterprise (public organization);
- on the violation of the property rights of the owner of the patent for an invention;
- on the conclusion and fulfillment of a license agreement on the use of an invention, including in case of the issuing of a simple license by one of the patent owners (the author or the enterprise);

- on the monetary compensation for the use of an invention during the period of its temporary protection and its amounts;

- on the amount of the share of the economic impact in the price of a product that is obtained due to the use of an invention;

- on the right of prior use.

3. The patent courts of the union republics, which have an oblast division or contain autonomous republics, consider the categories of disputes, which are indicated in paragraph 2 of this article, as appellate courts.

4. The ruling on a dispute, which has been made by a patent court of a union republic, is not subject to appeal.

5. The USSR Patent Court considers as a court of the first instance the following categories of disputes:

- complaints against decisions of the Higher Appellate Council of Patent Examination attached to the USSR State Committee for Science and Technology on the refusal to issue a patent for an invention or against the issuing of a patent with the improper indication in it of the extent of the protected patent rights;

- suits for the recognition of an issued patent as invalid in part or in full;

- petitions on the making of changes in the composition of the joint authors in an issued patent;

- on the granting of compulsory licenses and the amounts of the payments with respect to such licenses;

- on the amount of compensation in case of the compulsory purchase of a patent.

6. The USSR Patent Court considers for purposes of supervision in accordance with the objections of the chairman of the USSR Patent Court cases which have been settled by the patent courts of the union republics. The ruling on a dispute, which has been made by the USSR Patent Court, is final.

7. The chairman, the deputy chairmen, the members, and the people's assessors of the USSR Patent Court are elected by the Presidium of the USSR Supreme Soviet.

8. The organization and the procedure of the activity of the USSR Patent Court are specified by the Statute on the USSR Patent Court and the Regulations of the USSR Patent Court, which are approved by the Presidium of the USSR Supreme Soviet.

Article 57. The Liability for the Violation of the Rights of the Authors of Inventions

The appropriation of authorship, the compelling of joint authorship, and the divulgence of the essence of a proposed invention before the submission of an application without the consent of the author entail criminal or other liability in conformity with prevailing legislation.

Article 58. The Liability of Officials for the Violation of Legislation in the Area of Invention

Criminal, administrative, and other proceedings are instituted in conformity with prevailing legislation against officials who are guilty of committing the following acts:

- the infringement of the rights and legal interests of inventors;

- the inclusion among the joint authors of people who did not take a direct creative part in the development of an invention;

- red tape and a negligent or unconscientious attitude toward their duties when drawing up applications for inventions, as well as when using inventions;

- the submission of unreliable state statistical reporting on the use of inventions.

Article 59. On the Guarantee of the Observance of the Rights of Inventors

Central and local organs of state power and management bear responsibility for the observance of the provisions of this Law, are guided by them when adopting enforceable enactments, which are connected with the activity of inventors, and form their relations with them in strict conformity with this Law.

V. The Final Provisions

Article 60. The Legislation on Inventive Activity in the USSR and the Union Republics

The legislation on inventive activity consists of this Law and other acts of legislation of the USSR and legislation of the union republics on questions which have been assigned to their jurisdiction.

Article 61. The Rights of Foreign Citizens, People Without Citizenship, and Foreign Juridical Persons

Foreign citizens, persons without citizenship, and foreign juridical persons enjoy the rights, which are stipulated by this Law and other acts of legislation of the USSR and the union republics on invention activity, on the same level of citizens and juridical persons of the USSR, if another thing does not follow from this Law and other acts of prevailing legislation.

Article 62. The Rights of Joint Ventures and International Associations and Organizations

1. The provisions of this Law are used with respect to joint ventures and international associations and organizations, which have been established on USSR territory with the participation of Soviet enterprises and foreign enterprises, organizations, and firms.

2. The procedure of issuing mandatory licenses, which is stipulated by paragraph 1 of Article 33 of this Law, is not used with respect to joint ventures and international associations and organizations.

3. The patenting in foreign countries of inventions, which have been developed at joint ventures and international associations and organizations, as well as the organization of inventive activity at the indicated ventures, associations, and organizations are carried out in conformity with their constituent documents.

Article 63. International Treaties

If different rules than the ones, which are contained in Soviet legislation in the area of invention, are established by a USSR international treaty, the rules of the international treaty are used.

Discussion on New Draft Law on Patents, Inventions

Letters to PRAVDA

18140110a Moscow PRAVDA in Russian 4 Jan 89 p 3

[Letters to PRAVDA under the rubric "We Are Discussing the Draft of the Law on Inventive Activity in the USSR"]

[Text]

A Basis Exists

The draft of the Law on Inventive Activity in the USSR is, in my opinion, a good basis for the protection of the rights of inventors and the state management of invention in the country. The authors of the draft essentially took into account domestic and foreign experience. This concerns, for example, the legal classification of technical solutions, the group of objects that can be protected, the privileges for inventors, and the role of the state in this sphere. The protection by special legislation of new strains of plants and breeds of animals is envisaged—that, strictly speaking, is how they act in the majority of countries of the world. I support the legal concept of an invention, the introduction of the deferred examination of applications, and the establishment of a patent court.

It is especially important that the requirements of the present economic policy of the Soviet state are reflected in the draft. And still it is premature to say that it completely satisfies specialists. Without aspiring to a thorough analysis of the draft, I will touch upon several of its provisions.

The draft contains the customary declarations and loud expressions. It seems that words like "utmost" and "comprehensive" are unbecoming of such an act. In its preamble, I believe, the goals and tasks of the Law should be stated more briefly and Article 1 itself should be eliminated.

Section I of the draft specifies the system of the organization of invention in the USSR often from the standpoint of administrative "towers." Evidence is the directive nature of the content of a number of paragraphs of Article 3 of the draft. It is also impossible to agree with the fact that a secondary role has been assigned to the Soviets of People's Deputies—after ministries and departments. Now in general doubt is being voiced about the expedience of the existence of these organizations of management, here they are being given great powers. That is why in this section I liked only the content of Article 2. But its wording could be different.

In section II the terms "novelty" and "unobvious nature" of technical solutions, in my opinion, are legitimate. Their legal content is also presented rather well. As to the third qualifying attribute—"production applicability," such a definition is poor. In fact this is the narrowing of the patentability of an invention, which gives grounds to contest nearly any technical solution, which has been submitted by a third person for defense. It is better to insert the term "practical use," that is, the use of an invention under various conditions, and not only under production conditions.

It is worth considering how validly it is proposed not to recognize algorithms and programs for computers as inventions. Indeed, we have fallen greatly behind here, and the patenting of such objects by foreign applicants can entail certain problems. But one must also not forget that their patent protection will be a stimulus for Soviet inventors as well.

A few remarks on what did not find a place in the draft of the Law. There is no norm on the right to post-use. In life it can happen that a patent will cease its effect early for reasons that do not depend on its owner. For example, owing to a court judgment, which was subsequently recognized as illegal. The patent duty during this time was not paid, and the patent became void. Other people began to use it, invested assets, and so on. But now the patent has been reinstated. How should the people, who began to use it during the period of inactivity, act? But the recognition for them of the right of post-users.

A fundamental aspect of the draft is the introduction of one form of protection of inventions: the patent. Let us be thoroughly consistent. One must call its owner [sobstvennik] the patent owner [patentovladelets], and not the patent owner [patentoobladatel].

The country waited a long time for the draft of the Law on Inventive Activity in the USSR. The delay in many respects was explained by the lack of preparation of science, including juridical science, and practice for the fulfillment of the social order of the state, this was also reflected in the draft itself. Of course, we lag greatly behind many countries in the protection of inventions. Even more seriously in the protection of biological objects (strains of plants, breeds of animals, and so forth). A breakthrough in this respect, it seems, has appeared. Article 8 of the draft envisages the protection of such objects by special legislation. It is necessary, I believe, to begin its preparation immediately.

[Signed] Candidate of Juridical Sciences V. Levchenko, senior scientific associate of the Institute of State and Law of the USSR Academy of Sciences

Not Only Patents

In the Law on Inventive Activity there should, in my opinion, be envisaged the issuing of not only patents for inventions, but also inventor's certificates on the presently existing basis. The point is that the author in conformity with the draft of the Law should pay duties for the acceptance for consideration of an application for the obtaining of a patent, the making of an examination, the issuing of a patent, its keeping in force, as well as for the performance of other legally significant actions that are connected with the patent. Overall, judging from the cited list, considerable duties. But far from every applicant (especially independent authors) will be able to get these expenses from his personal budget. Not everyone will also decide to go into debt on such an occasion. Not everyone will be able also to find other interested people or organizations, which will agree to these payments for him.

It seems that patenting and patenting alone will lead not to the increase of inventive activity in the country, for which, strictly speaking, the Law is also intended, but to the sharp decrease of the activity of inventors.

The people, who develop new technical solutions, need assistance, moreover, regardless of in what sector of production the proposed inventions can be used. Therefore, in the new legislation there should be envisaged mandatory free technical assistance to authors at their place of work and, for nonworking authors, at organizations of the All-Union Society of Inventors and Efficiency Experts.

[Signed] A. Rabinkov, engineer, inventor.

Moscow

The Darkened Dawning

I have more than 20 author's certificates for inventions. But I could develop many more. How many dawnings have darkened due to the lack of demand for new technical solutions! At all levels of the management hierarchy already partially obsolete, but to a significant extent fresh developments are collecting dust by the many thousands. But the painstaking, most highly creative activity of highly skilled specialists lies behind them.

In the draft of the Law steps on the quicker implementation of inventions are envisaged. This is mainly for the future. But one must also not forget the reserve that already exists.

[Signed] Professor V. Slesarev

Omsk

Letters to IZVESTIYA

18140110b Moscow IZVESTIYA in Russian 5 Jan 89 p 3

[Letters to IZVESTIYA under the rubric "We Are Discussing the Draft of the Law on Inventive Activity in the USSR"; first paragraph is IZVESTIYA introduction]

[Text] Today we are commencing a new rubric which is devoted to the discussion of the draft of the Law on Inventive Activity in the USSR (it was published in IZVESTIYA, No 362, 1988). From the letters, which have been received by the editorial board, there have been selected for the first publication such letters, which contain suggestions on key items of the draft.

Means Wide of the Mark

Unfortunately, the draft of the Law, which is being discussed, turns inventions from means of developing new equipment and new materials and technologies into something opposite, inasmuch as there is recognized as an invention only "...the technical solution of a problem, which has novelty, an unobvious nature, and production applicability." In this definition the main thing is lacking—the criterion of "a positive impact." Moreover, the Law limits the right of the inventor to dispose independently of the result of his creative work. Both in aggregate are fraught with serious costs under the economic conditions that have formed today, when the required market mechanism of the management of the economy is lacking, while prices on the market are not limited. Therefore, the indicated factors can turn the inventor into a source of ideas and solutions, which are expensive, but harmful to the consumer and society as a whole and which will meet only the requirements of the monopolist—the producer of goods.

While encouraging the increase of the dictation of the producer, the Law at the same time erects barriers in the way of the development of solutions which are ahead of their time. This follows from the above-cited definition of an invention, the criteria of which, in addition, allow ambiguous interpretation.

RULES OF THE ARBITRATION COURT AT THE USSR CHAMBER OF COMMERCE AND INDUSTRY

Approved by the decision of the Presidium of the USSR Chamber of Commerce and Industry of March 11, 1988.

I. General Provisions

1. Jurisdiction of the Arbitration Court

§ 1. Jurisdiction of the Arbitration Court

1. The Arbitration Court at the USSR Chamber of Commerce and Industry which is a standing arbitral tribunal shall settle disputes resulting from contractual and other civil-law relations in the course of foreign trade and other international economic and scientific-technological contacts.

2. The Arbitration Court shall entertain disputes where the parties have agreed in writing to submit to its consideration a dispute which has already arisen or may arise. Agreement to refer a dispute to the Arbitration Court may also be expressed on the part of the plaintiff by bringing an action and on the part of the defendant—by conduct evidencing his voluntary submission to the jurisdiction of the Court, in particular, by a notice in reply to the enquiry of the Court about the consent to submit to its jurisdiction.

The Arbitration Court shall also entertain disputes subject to its jurisdiction by virtue of international agreements.

3. An arbitration clause shall be considered having legal force irrespective of the validity of the contract, a component part of which it is.

4. The question of the competence of the Arbitration Court in a given case shall be decided by the tribunal considering the case.

2. Organisation and Work of the Arbitration Court

§ 2. Structure of the Arbitration Court

The Arbitration Court shall be composed of the President and two Vice-Presidents, the arbitrators, the Secretary and his deputy.

§ 3. The President and the Vice-Presidents of the Arbitration Court

1. The President of the Arbitration Court and the Vice-Presidents shall be elected by the arbitrators from among themselves for a period of 4 years.

2. The President of the Arbitration Court or, in his absence, one of the Vice-Presidents designated by the President, shall represent the Court in its relations within the country and abroad.

3. In organising the work of the Arbitration Court, the President of the Court shall perform the functions stipulated by these Rules.

4. The functions of the Vice-Presidents of the Arbitration Court shall be defined by the President of the Court.

§ 4. Arbitrators

1. The capacity to act as an arbitrator shall belong to a person included in the List of Arbitrators and possessing adequate special knowledge in resolving disputes mentioned in sub-paragraph 1 of Para. 1. The arbitrators shall be included into the List by the Presidium of the USSR Chamber of Commerce and Industry for a period of 4 years. The List of Arbitrators shall specifiy the name and surname of the arbitrator, his position, scientific degree (title), speciality and place of residence.

2. The arbitrators are independent and impartial in fulfilling their duties. They are not representatives of the parties.

3. Each case shall be considered by a tribunal composed of three arbitrators or by a single arbitrator. The formation of a tribunal or the appointment of a single arbitrator shall be effected in accordance with the Rules. The functions of a tribunal, as specified in the Rules, shall equally relate to a single arbitrator.

§ 5. The Secretary

1. The Secretary of the Arbitration Court or, in his absence, the Deputy of the Secretary shall organise the clerical work connected with the Court's activities and shall also perform other functions mentioned in the Rules.

2. The Secretary of the Arbitration Court and his Deputy shall be appointed by the Presidium of the USSR Chamber of Commerce and Industry.

§ 6. Seat of the Arbitration Court and the Place of Its Meetings.

1. The seat of the Arbitration Court and the place of the hearings shall be the city of Moscow.

2. In case of necessity an arbitration tribunal may hold a hearing in another place.

§ 7. Confidentiality

The arbitrators and reporters (Para. 33 of the Rules) shall have the obligation to secure confidentiality of information concerning disputes examined by the Arbitration Court.

§ 8. Presentation of Documents

All documents pertaining to the institution and carrying out of the arbitral proceedings shall be presented by the parties in a number of copies sufficient for each party to be provided with one copy and the Arbitration Court with not less than one copy.

2. The documents mentioned in sub-paragraph 1, excluding written evidence (sub-paragraph 2 of para. 30), shall be presented in the language of the contract, or in the language of the correspondence conducted by the parties between themselves, or in the Russian language. The Arbitration Court may, at its own discretion or at a party's request, direct the other party to translate into Russian the documents presented by it or to secure such translation at that other party's expense.

§ 9. Language of the Hearing

The hearing shall be conducted in the Russian language. With the consent of the parties the Arbitration Court may conduct the hearing in another language. If a party does not know the language in which the hearing is conducted, the Court shall, at the party's request and expense, provide him with the services of an interpreter.

§ 10. Time Limits for Proceedings in a Case

The Arbitration Court shall take measures to secure, as far as possible, completion of the proceedings in a case within not more than 6 months from the date of the formation of the arbitration tribunal or election or appointment of the single arbitrator.

§ 11. Forwarding and Delivery of Documents

1. The Secretary of the Arbitration Court shall see that all documents in a case are forwarded to the parties. They shall be sent to the addresses indicated by the parties.

2. Statements of claim, explanations of defendants, invitations for hearing, arbitration awards and rulings shall be forwarded by registered letters with return receipt requested.

3. Other documents may be forwarded by registered or ordinary mail, notices and notifications may be sent by telegraph or telex.

4. Any of the documents mentioned above may also be delivered personally to a party against receipt.

5. Documents sent by the Arbitration Court shall be considered delivered also in case when the addressee refused to accept them or did not receive them despite the notice of the postal-office.

§ 12. Arbitration Fees and Costs

Computation and allotment of arbitration fees and compensation of the costs of the Arbitration Court shall be effected in accordance with the Schedule on Arbitration Fees and Costs and on Expenses of the Parties forming a component part of the Rules.

3. Applicable Law

§ 13. Applicable Law

1. The Arbitration Court shall settle disputes on the basis of the applicable rules of substantive law, being guided, if the dispute has arisen from contractual relations, by the provisions of the contract and having regard to trade usage.

2. The Arbitration Court shall apply to the proceedings the present Rules and legislative norms of the Soviet law related to international commercial arbitration. In the rest the proceedings are carried out at the discretion of the arbitration tribunal, subject to the condition of equal treatment of the parties and in order to provide possibility for each party to properly defend his interests.

II. Proceedings in the Arbitration Court

1. Institution of Proceedings

§ 14. Bringing of an Action

1. The arbitration proceedings shall be instituted by filing a statement of claim with the Arbitration Court.

2. The date of filing of the statement of claim shall be the date of its delivery to the Arbitration Court and, if the statement of claim is sent by post, the date of the stamp of the post-office at the place of sending.

§ 15. Content of the Statement of Claim

1. The statement of claim shall include:

(a) the names of the parties;

(b) the plaintiff's demands;

(c) the plaintiff's signature;

(d) the addresses of the parties.

2. The statement of claim shall also include:

(a) substantiation of the jurisdiction of the Arbitration Court, unless such jurisdiction results from an international agreement binding upon the parties;

(b) circumstances of fact and law on which the plaintiff bases his claim, and indication of evidence corroborating these circumstances;

(c) the amount of the claim;

(d) proof of payment of the arbitration fee;

(e) the name and surname of the arbitrator chosen by the plaintiff, or the request for appointment of an arbitrator by the President of the Court, the plaintiff can also choose a reserve arbitrator;

(f) list of documents attached to the statement of claim.

§ 16. Amount of the Claim

1. The statement of claim shall bear the indication of an amount of the claim even where the claim or a part thereof has a non-monetary nature.

2. The amount of the claim shall be determined, in particular:

(a) if the claim is for recovery of money, by the sum sought to be recovered;

(b) if the claim is for vindication of property, by the value of the property sought to be vindicated;

(c) if the claim is for recognition or transformation of a legal relationship, by the value of the subject-matter of the relationship at the moment of bringing the action;

(d) if the claim is for an act to be done or forborne from, on the basis of the available information as to the property interests of the plaintiff.

3. If the claim consists of several demands, the amount of each demand shall be indicated separately, the amount of the claim shall then be the total amount of all the demands.

4. If the plaintiff has failed to determine, or has incorrectly determined, the amount of the claim, the Arbitration Court shall, on its own initiative or at the request of the defendant, determine the amount of the claim on the basis of the available information.

§ 17. Rectification of the Statement of Claim

1. On finding that the statement of claim has been filed without the requirements of Para. 15 being compiled with, the Secretary of the Arbitration Court shall invite the plaintiff to rectify the defects so found, the period to rectify defects as to the requirements of sub-paragraph 1 of Para. 15 not exceed two months from the date of the receipt of such invitation. If these defects are rectified within the above mentioned period the date of the filing of the statement of claim shall be the date mentioned in sub-paragraph 2 of Para. 14. Pending rectification of the above mentioned defects the case shall stay without progress.

2. Where, despite the invitation to rectify the statement, of claim, the plaintiff insists on the case being examined the Court shall either make an award or rule to terminate the proceedings.

2. Preparation of the Case for Examination

§. 18. Notification of the Defendant and Election of Arbitrator by the Defendant

1. Upon receipt of the statement of claim the Secretary of the Arbitration Court shall notify the defendant thereof and shall send him copies of the statement of claim and of the documents attached thereto, as well as a copy of the List of Arbitrators.

2. At the same time the Secretary shall invite the defendant to file within 30 days after receiving the statement of claim his written explanations supported by relevant evidence. At the defendant's request the above mentioned period may be prolonged.

3. Within the same period the defendant shall indicate the name and the surname of the arbitrator chosen by him or apply for nomination of an arbitrator on his behalf by the President of the Arbitration Court, the defendant can also choose a reserve arbitrator.

§ 19. Formation of a Tribunal

1. The arbitrators chosen by the parties or appointed by the President of the Arbitration Court in accordance with Paras. 15 and 18 shall elect the chairman of the tribunal from the List of Arbitrators.

2. If the defendant fails to choose an arbitrator within time mentioned in Para 18, the arbitrator shall be appointed on his behalf by the President of the Arbitration Court.

If the arbitrators fail to elect the chairman of the tribunal within fourteen days from the date of the election or appointment of the second arbitrator, the chairman of the tribunal shall be appointed by the President of the Arbitration Court.

3. Where there are two or more plaintiffs or defendants, the plaintiffs and the defendants shall choose one arbitrator on each side, they also can choose one reserve arbitrator each. Failing agreement among the plaintiffs or the defendants the arbitrator shall be appointed by the President of the Arbitration Court.

§ 20. Election or Appointment of a Single Arbitrator

Upon agreement of the parties the case shall be examined by a single arbitrator, who shall be chosen from the List of Arbitrators by mutual agreement of the parties or, failing such agreement, shall be appointed from the same List by the President of the Arbitration Court.

§ 21. Preparation for the Consideration of the Case

1. The arbitration tribunal shall check the condition of the preparedness of the case for consideration and, if it deems so necessary, shall take further measures to prepare the case, particularly by obtaining written explanations, evidence, or other additional documents from the parties. If the Arbitration Court takes further measures to prepare the case, it shall determine time-limits within which such further steps should be taken.

2. The chairman of the arbitration tribunal may give instructions to the Secretary of the Arbitration Court in connection with the preparation and the conduct of the consideration. He shall also direct the Secretary to invite the parties to the hearing.

§ 22. Notification of the Parties about the Hearing

The parties shall be invited to the hearing by communications indicating the time and place thereof and forwarded to them so as to enable each party to have at least 30 days at its disposal to prepare for the hearing and to appear thereat. Upon agreement of the parties this period can be reduced.

§ 23. Challenge to Arbitrator, Expert or Interpreter

1. Each party shall be entitled to challenge any arbitrator, chairman of the arbitration tribunal, or single arbitrator, if there are doubts about their impartiality, particularly if it can be supposed that they are personally, directly or indirectly interested in the outcome of the proceedings. Also, any arbitrator, chairman of the tribunal, or single arbitrator can reject his nomination on the abovementioned grounds.

The petition of challenge must be submitted before the commencement of the proceedings. Such petition submitted subsequently shall be considered, only if the arbitration tribunal finds the delay justifiable.

2. The question of challenge shall be decided by the other members of the tribunal. If they fail to come to an agreement, or if the two arbitrators or the single arbitrator are challenged, the question of challenge shall be decided by the President of the Arbitration Court.

3. Experts and interpreters can be challenged on the grounds mentioned in sub-paragraph 1. In this case the question of challenge shall be decided by the arbitration tribunal.

§ 24. Substitutions in the Arbitration Tribunal

If a chairman of the arbitration tribunal, single arbitrator, or arbitrators is not able to participate in the consideration of the case, a new chairman of the arbitration tribunal, single arbitrator, or arbitrator shall be elected or appointed in accordance with the Rules, provided he is not to be replaced by a reserve arbitrator. If necessary and with regard to the opinion of the parties the arbitration tribunal may examine anew issues which have been already considered in the course of hearing preceeding the substitution.

3. Examination of the Case

§ 25. Presence at the Hearing

The hearing of the case shall be conducted in private. With permission of the arbitration tribunal and upon consent of the parties at the hearing may be present persons not participating in the proceedings.

§ 26. Participation of the Parties

1. The parties can conduct their cases in the Arbitration Court directly or through their duly authorised representatives appointed by the parties at their discretion, including those appointed from among foreign citizens and organisations.

2. Failure to appear by a party who has been duly notified of the time and place of the hearing shall not prevent the case from being heard, unless before the completion of the hearing the defaulting party requests to adjourn it for good reasons.

3. Each party can ask for the hearing of the case to be conducted in its absence.

§ 27. Settlement of a Dispute by Conclusion of an Amicable Agreement

At any stage of the proceedings the arbitrators shall use every available to them opportunity to settle dispute by conclusion of an amicable agreement.

§ 28. Examination of the Case on the Basis of Written Materials

The parties may agree that the arbitration tribunal shall settle the dispute on the basis of written materials only without holding a hearing. However, the arbitration tribunal may direct that a hearing be held, if the materials presented prove insufficient to examine a dispute on the merits.

§ 29. Counterclaim

1. Before the hearing of the principal claim is completed the defendant may submit a counterclaim. If due to an unjustified delay on the part of the defendant in submitting a counterclaim the proceedings are protracted, then Arbitration Court may charge the defendant with any additional costs of the Court and expenses of the other party resulting therefrom.

2. The counterclaim shall meet the same requirements as the principal claim.

§ 30. Evidence

1. The parties must prove circumstances relied on by them in support of their demands or objections. The arbitration tribunal may require the parties to present other evidence. It also may, at its own discretion, direct that expert examination be conducted and obtain evidence from third parties as well as summon and hear witnesses.

2. A party may present written evidence in the original or in the form of copies certified by him. The Arbitration Court may require translation of such evidence into another language where it is necessary in the interests of the examination of the case.

3. Verification of evidence shall be effected as directed by the arbitration tribunal. The arbitration tribunal may entrust one of the arbitrators with conducting such verification.

4. The arbitrators shall evaluate the evidence according to their inner convictions.

§ 31. Adjournment of Hearing and Stay of Proceedings

Where necessary, on the application of the parties or on the initiative of the tribunal, hearing can be adjourned or proceeding stayed. Adjournment or stay shall be directed by a ruling.

§ 32. Record of Hearing

1. The hearing of the case shall be recorded, the record to include the following data:

the name of the Arbitration Court;
the number of the case;
the place and date of the hearing;
the names of the parties in dispute and of their representatives;
information as to the parties' participation;
the names and surnames of the arbitrators, reporter, witnesses, experts, interpreters, and other participants of the meeting;
a short description of the course of the meeting;
the parties' demands and an account of other important statements of the parties;
the indication of reasons for adjournment or for completion of proceedings;
the signatures of the arbitrators.

2. The parties may acquaint themselves with the contents of the record. The tribunal may, at the request of a party, make a ruling to amend the record.

3. A copy of the record shall be given to a party at his request.

§ 33. Reporter

1. The record of the hearing shall be kept by a reporter appointed for each case by the President of the Arbitration Court from the list of reporters approved by the Presidium of the USSR Chamber of Commerce and Industry.

2. The reporter shall be present at a private conference of the arbitration tribunal (sub-paragraph 2 of Para 35).

4. Termination of Arbitration Proceedings

§ 34. Completion of Proceedings

1. The arbitration proceedings shall be completed by the making of an award or of a ruling.

2. An award shall be made where the dispute is solved on its merits, including where it is made on the basis of the plaintiff's withdrawal of the claim or on the basis of the parties' request for an award in accordance with the amicable settlement reached by them.

§ 35. Making of the Award

1. On finding that all facts connected with the dispute have been sufficiently clarified the arbitration tribunal declares the hearing of the case completed and shall proceed to make the award.

2. The award shall be made by the Arbitration Court at a private conference by a majority of votes of the arbitration tribunal. The arbitrator disagreeing with the decision of the majority can express in writing his dissenting opinion which shall be attached to the file.

§ 36. Postponement of Making of the Award

The arbitration tribunal may postpone making of the award and summon the parties to an additional hearing if it is required by the interests of proper settlement of the dispute and if the operative part of the award has not been announced to the parties.

§ 37. Content of the Award

1. The award shall include, in particular:

the name of the Arbitration Court;
the place and date of the award;
the names and surnames of the arbitrators;
the names of the parties and other persons participating in the case;
the subject-matter of the dispute and a summary of the circumstances of the case;
the decision concerning the claim as well as concerning the fees and expenses in the case;
the reasons for the decision;
the signature of the arbitrators.

2. If one of the arbitrators is not able to sign the award, the President of the Arbitration Court verifies it by his signatures describing the reasons.

§ 38. Announcement of the Award

1. Immediately on the completion of the hearing the operative part of the award shall be formulated and then orally announced to the parties or, if the parties are absent, communicated to them in writing.

2. A motivated arbitration award shall be sent to the parties in writing within a period, not exceeding 30 days, established by the arbitration tribunal.

3. By way of exception to sub-paragraph 1 the arbitration tribunal may decide that the arbitration award shall be sent to the parties in written form without being announced orally, within a definite period not exceeding 30 days.

4. The President of the Arbitration Court may, if necessary, prolong the periods mentioned in sub-paragraphs 2 and 3.

§ 39. Additions to and Rectification of the Award

1. On a party's application filed not later than 30 days from the date of receipt by him of the arbitration award the arbitration tribunal may render a supplementary award, if it appears that the award does not contain answer to all the demands of the parties. The supplementary award shall be made by the arbitration tribunal after a new hearing to which the parties shall be invited.

2. Obvious misprints or errors in the text, not bearing on the substance of the case, and arithmetical mistakes in the text of the award can be corrected by a ruling of the arbitration tribunal at a party's request or on the initiative of the arbitration tribunal.

3. The decision to supplement or the ruling to rectify the award shall be an integral part of the supplemented or rectified award. The parties shall not be obliged to make good any expenses connected with supplementing or rectifying the arbitration award.

§ 40. Execution of the Award

The awards of the Arbitration Court shall be final and without appeal. They shall be carried out by the parties voluntarily within the period indicated by the Court. If no period is indicated in the award, the latter shall be carried out immediately.

Awards not carried out voluntarily within the period indicated shall be enforced according to law and international agreements.

§ 41. Termination of Proceedings without Making Award

1. If no award is made in the case, the proceedings shall be terminated by a ruling.

2. A ruling to terminate the proceedings shall be given, in particular:

(a) where the plaintiff withdraws his statement of claim;

(b) where the parties reach an amicable agreement approved by the tribunal in the absence of the parties' request for an award as per sub-paragraph 2 of Para.34.

(c) in the absence of the pre-requisites necessary for the case to be examined and solved on its merits including where owing to the plaintiff's inaction the case stays without progress for more than six months.

3. Paragraphs 34 to 40 shall, respectively, apply to a ruling of the Arbitration Court. Prior to the formation of a tribunal the ruling to terminate the proceedings shall be given by the President of the Arbitration Court.

§ 42. Publication of the Awards of the Arbitration Court

With permission of the President of the Arbitration Court the awards of the Court may be published in the periodicals or in special collections of the awards. The interests of the parties shall be taken into account and, in particular, information containing identification of persons, enterprises, commodities and prices shall not be published.

The President of the Arbitration Court may decide not to allow publication of other information which he deems inappropriate to publish.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1989— 242 - 209 /05058